Public Utilities FORTNIGHTLY

August 22, 1929

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PUBLIC UTILITIES FORTNIGHTLY; a magazine dealing with the problems of utility regulation and allied topics, including the official decisions of the State Commissions and courts; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication. Published every other Thursday; 75 cents a copy; $15.00 a year; with bound volumes and Annual Digest, $32.50 a year. Editorial and advertising office, Munsey Building, Washington, D. C., circulation office, Duffy-Powers Building, Rochester, N. Y. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879.

Pages with the Editors

THE frontispiece in this issue of the magazine—on page 194—is the work of the well-known artist, VERNON HOWE BAILEY, of New York.

* *

MR. BAILEY is one of that small group of American artists (of which the late JOSEPH PENNELL was long regarded as the leader) who have had the vision to see the dramatic and artistic aspects of our modern industrial growth as expressed in the remarkable and characteristic skyscrapers, power plants, dams and other architectural creations that constitute the outward signs of this country's business genius—the extraordinary symbols of industrial power that is at once the envy and the model for the other nations of the world.

* *

INDEED, modern American business buildings, which have been poetically referred to as the "towering citadels of commerce" and "the battlements of business," have established our industrial architecture as one of the two great contributions that this country has made to the art of the world.

* *

AND it is this phase of our industrial leadership and creative talent that has served as the inspiration of that small but growing group of painters, etchers, lithographers and photographers who are transcribing on paper and canvas the wonders of our industrial centers that are so overwhelming in their size, so impressive in their suggestion of power and so beautiful in their *ensemble* as to deserve the designations of "modern Babylons."

* *

DR. LYLE W. COOPER, whose article on pages 204 to 213 in this issue summarizes the attitude of union labor toward our public utility enterprises (with specific reference to the record of the American Federation of Labor), is Professor of Economics at the Robert A. Johnston College of Business Administration at Marquette University of Milwaukee, Wisconsin—the state where the first experiment was undertaken in the regulation of public utility corporations through the medium of a State Commission.

* *

DR. COOPER has specialized in the subject which he treats in this article, and is recognized as one of our outstanding authorities.

* *

AFTER carrying on his graduate work at the universities of California, Wisconsin and Chicago, DR. COOPER completed his work for a Ph.D. degree at the latter institution in 1925 with the thesis "Economic Policies and Theories of the American Federation of Labor." The following year he was connected with the Illinois Department of Labor. He has contributed frequent articles on labor problems to such standard periodicals as *Political Science Quarterly, Quarterly Journal of Economics, Journal of Political Economy,* and *American Federationist.* The editors are now glad to include him among the contributors to PUBLIC UTILITIES FORTNIGHTLY.

* *

SENATOR JAMES COUZENS of Michigan (whose comments on his proposed bill for creating a Communications Commission, appear on pages 216 to 220 of this number) first came into national prominence as a close associate of HENRY FORD: he was, indeed, the vice-president, general manager and treasurer of the Ford Motor Co. in Detroit.

* *

SENATOR COUZENS was appointed Senator to fill the unexpired term of TRUMAN S. NEWBERRY: and was later elected Senator in 1925. He has identified himself with the left wing of the Senate, and is recognized as one of the most effective as well as one of the most liberal of the Senatorial group.

* *

THE subject of which SENATOR COUZENS treats is of a controversial nature, and his bill (designated as Senate Bill No. 6) is and will be more or less of a storm center in Congress. It is with the purpose of presenting our readers with an authoritative statement from the author of the bill himself that the editors requested MR. JOHN T. LAMBERT, one of the most experienced and best-informed of the newspaper men in Washington, to obtain what is a first-hand and "official" interview.

* *

IN the coming issue of PUBLIC UTILITIES FORTNIGHTLY—out September 5th—will appear an article on the present railroad consolidation *impasse* in the United States—a subject that is commanding more and more space in the news and editorial columns of our daily press.

* *

THE article is contributed by DR. RALPH L. DEWEY, who has for several years been a student of recognized ability of our railroad problems.

* *

DR. DEWEY'S academic work was done

(*Continued on page VIII*)

at Oberlin College, Ohio State and Michigan Universities; it was from the latter institution that he received his Ph.D. degree when he completed his book "The Long-and-Short Haul Principle of Rate Regulation."

* *

DURING the past year DR. DEWEY has been engaged on special railway research work at the Brookings Institution of Washington, D. C., where he has been engaged on his book "Railroad Consolidation Since 1920," and has been, in addition, interested in the problems of regulating our electrical industry. He was teaching transportation at Ohio State University from 1926 to 1928, and was lecturer there when PROF. C. O. RUGGLES left there to go to Harvard University. He is now Assistant Professor of Economics at Ohio State.

* *

"How," inquires a Skeptical Reader of PUBLIC UTILITIES FORTNIGHTLY, "do the hidebound conservatives on one hand and the liberal extremists on the other, regard your editorial policy of publishing articles on both sides of controversial questions within the realm of regulation?"

* *

IN answer, the editors can refer the Skeptical Reader to the articles in the magazine itself—articles that come from recognized leaders of both camps.

* *

So far, neither the "hidebound conservative" nor the "liberal extremist" has interposed any objection to such an obviously open-minded policy which the editors are seeking to maintain with impartiality. Each one is given an opportunity to present his case on its merits.

* *

"BY definitely adopting and following the policy of treating impartially the controversial economic subjects relating to public utilities, you will be able to make PUBLIC UTILITIES FORTNIGHTLY not only the outstanding but practically the single publication devoted to public utilities policies," writes DR. JOHN BAUER.

* *

"IN my judgment, your publication covers public utility information not heretofore touched upon by other periodicals. Articles covered in it are of a broad nature, express the views of all sides of an issue, are condensed and to the point, and are a valuable form of record for a busy commissioner. The soundness of your editorial policy certainly meets with my approval," writes CHAIRMAN O. P. B. JACOBSON, of the Minnesota Railroad & Warehouse Commission.

* *

"THE new editorial policy of PUBLIC UTILITIES FORTNIGHTLY is to be commended, writes CHAIRMAN I. WADE COFFMAN, of the West Virginia Public Service Commission. "All the defense that state regulation requires against the suspicions of those who are skeptical of its effectiveness and against the uncertainties arising from the present mania for mergers of utility interests, is a fair discussion and honest statement of the development of this new branch of political science. PUBLIC UTILITIES FORTNIGHTLY offers the forum for such discussion and statement."

* *

THESE are but representative comments from our readers; they encourage the editors in their efforts to carry out an editorial policy that is, in their belief, just and fair to the Pros and Cons alike.

* *

AMONG the more important decisions recorded in the "Public Utilities Reports" section in the back of this issue may be cited the following:

* *

THE treatment of underground telephone conduits in a valuation proceeding is explained in a recent decision by the Pennsylvania Commission. (See page 161.) One point involved is the cost of paving over the conduits and another point is the abandonment of underground structures required by municipal improvement.

* *

SEASONAL customers present peculiar problems for the utilities. The New Jersey Commission has decided that an electric company may segregate these customers from the all year round customers and impose a proper charge for the connection and disconnection of service. (See page 166.)

* *

THE installation of one-man cars in order to reduce expenses and to meet competition is a matter of management with which a Commission is reluctant to interfere. The Pennsylvania Commission has held that it should not override managerial discretion in the matter unless the cars increase public danger and impair reasonable safety of service. (See page 168.)

* *

THIS Commission also takes the position that in looking after the safety of passengers it cannot require an absolute insurance against every possible contingency and that an objection to the operation of one-man cars based upon a possible fainting or death of the operator is too remote.

* *

THE Wisconsin Commission has fixed the rate for telephone service during the summer season by apportioning the maintenance and repair expenses on a customer basis and the remaining expenses on a monthly basis, using three months as the average use of the summer season service. (See page 218.)

* *

THE next number will be out September 5.

—THE EDITORS.

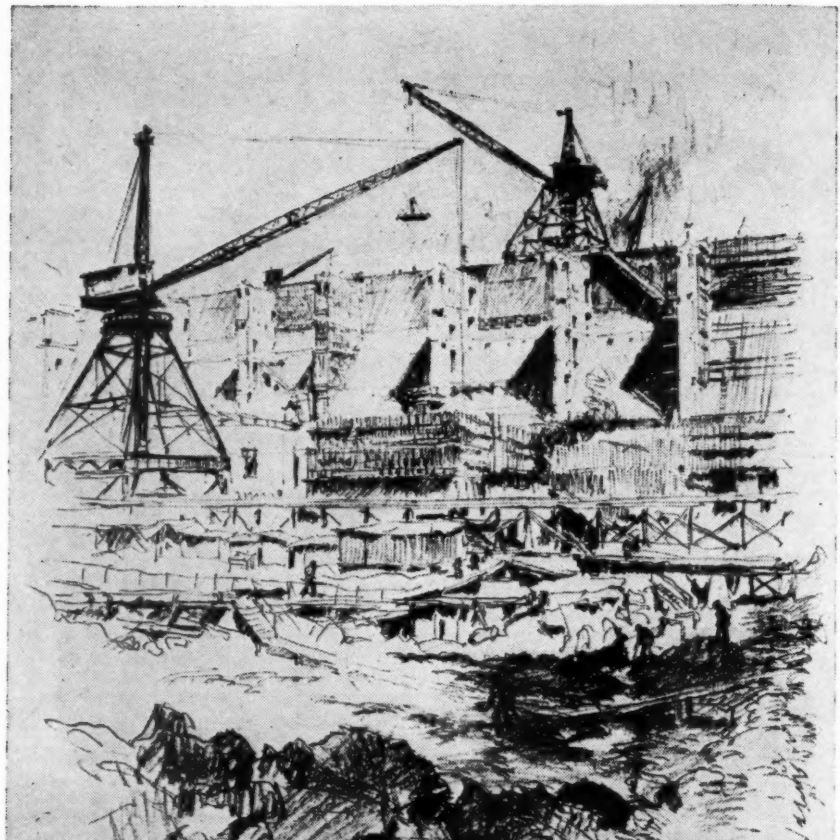
AUGUST

Reminders of Coming Events		Utilities Almanac	*Notable Events and Anniversaries*
22	T^h	JOHN FITCH carried the first passengers on his new steam packet on the Delaware River, 1787.	
23	F	The first tests of radio reception on moving railroad trains were made by the Lackawanna Railroad, 1914.	
24	S^a	The Mackay Companies forecast bigger business when it announced the purchase of the Federal Telegraph Company with its radio communication system, 1927.	
25	S	Crowds gathered along the Baltimore & Ohio tracks to gaze in wonderment at the first steam railroad train (in four sections), to enter Washington, D. C., 1835.	
26	M	PETER COOPER'S steam locomotive "Tom Thumb" proves its practicability by racing a horse while returning from Ellicott City, Md., 1830.	
27	T^u	¶*Sessions open today of the Convention of the National Association of Railroad and Utilities Commissioners at Glacier National Park Hotel, Montana.*	
28	W	The first successful American attempt at radio transmission from an airplane in flight to a ground station was made at Sheepshead Bay, New York, 1910.	
29	T^h	The famous locomotive *"John Bull,"* made in England for use in the United States, was delivered to the Mohawk & Hudson Railroad, 1831.	
30	F	ARTHUR KORN, a German radio expert, began his first experiments in the radio transmission of still pictures, 1907.	¶*The Labor Day rush begins.*
31	S^a	The first steamboat to be launched in trans-Atlantic waters was set afloat at Glasgow, Scotland, 1812.	

SEPTEMBER

1	S	The first loaded vessel to be transported across the 4-mile Isthmus of Corinth was dragged over a crude tramway by 100 Greek slaves, 643 B. C.	
2	M	SAMUEL F. B. MORSE exhibited his first model of the telegraph instrument at New York University where a 1700 foot circuit had been set up, 1837.	
3	T^u	¶*Start planning today to attend the 48th convention of the American Electric Railway Association in Atlantic City, N. J., September 28–30, 1929.*	
4	W	The first central power station in the world was opened in Pearl Street by THOMAS A. EDISON; its 2,000 H. P. lighted a circuit of 5,500 lamps; 1882.	

"The nature of the business makes every public utility employee a servant of the community served by his company."
—LOUIS L. EMMERSON, *Governor of Illinois*



Drawing by Vernon Howe Bailey

A Modern Babel

Some of the massive masonry that marks the uncompleted Muscle Shoals power-development project, around which so much political and economic controversy has raged.

—See Page 204

Public Utilities
FORTNIGHTLY

VOL. IV; NO. 4 AUGUST 22, 1929

The PUBLIC UTILITIES AND THE PUBLIC

THERE is an interesting struggle going on between the various major press interests of this country for the use of trans-oceanic short-wave channels. Some months ago it was the idea of the Federal Radio Commission that the problem of allocating these channels between the different newspaper interests could be settled by reserving twenty trans-oceanic short-wave channels and twenty continental wave lengths for the exclusive use of the press. It appears that the newspapers of the country are now in danger of losing this privilege because of the failure to reach an agreement among themselves regarding the relative use to be made of these communication facilities.

It was the purpose of the Commission to create a single public utility corporation to serve the press of the country equally and fairly. In accordance with this idea the Press Wireless, Inc., was organized by a group of the larger newspapers and its creation was approved by the Commission.

It further appears, however, that the William Randolph Hearst interests have been the leaders in the revolt against this procedure. A few hours after the incorporation of the Press Wireless, Inc., by the Federal Radio Commission, the Universal Service Wireless, a subsidiary radio communication company controlled by Hearst, appealed from the order in the court of appeals of the District of Columbia making the contention that the order of the Commission impaired free competition among newspapers generally.

If Mr. Hearst's subsidiary is successful in its appeal, these forty short-wave channels will probably be taken away from the press and given to such commercial concerns as the Universal Wireless, Inc., R. C. A.

Communications, Inc., and probably new organizations, such as the National Radio Press Association, Inc., whose application is now before the Commission.

Aside from the dissatisfaction of the Hearst interests, however, there have been informal protests from smaller newspapers to the effect that a giant single public utility created by order of the Commission could not be depended upon to serve all newspapers, great and small, without discrimination. These smaller independent units are of the opinion that a new utility would give preference to the larger and more powerful press interests.

It has been suggested that this communication problem would be better solved by distribution of the channels among the larger existing press associations.

The Washington *Post* of July 21, 1929, published the following description of the newly formed company:

> "The Press Wireless, Inc., incorporated under the laws of Delaware, intends to maintain headquarters at Chicago. Its capital stock will be $1,000,000 of which $116,000 has been paid in. No one paper will be allowed to buy more than $25,000, or less than $1,000 worth of stock.
>
> "Two stations will be erected in Chicago, three in New York, one in Boston, one in Los Angeles, one in San Francisco, and two in Washington. More stations will be erected as needed and offices will be opened in other cities as the service is expanded.
>
> "Among the papers which already have subscribed are the Chicago News, the Chicago Tribune, Los Angeles Times, San Francisco Chronicle, Christian Science Monitor, and the Gannett papers. Joseph Pierson, cable editor of the Chicago Tribune, is president."

For more than a year there have been various articles and editorials appearing in these pages suggesting that the declaration of the radio as a public utility was inevitable. Now it appears that the christening is at hand. Whether the Commission or Mr. Heart is successful in the pending litigation, the agency or agencies controlling these channels will have to be of a public utility character in order to afford the fair and equal service to the press required by public interest.

New York State Raises Its Rate for Water Power

THERE has been a highly significant water power rate decision by the New York State Commission on Water Power and Control advancing the rate charged by the state for state-owned water power from 75 cents to $5 a horsepower year. Notwithstanding the fact that the particular decision affects only a small amount of power the announcement of this decision by the staff of Governor Franklin D. Roosevelt, at the time touring the waterways of the Empire State, was generally interpreted as foreshadowing the policy of the Roosevelt administration in respect to the hydroelectric development of the state-owned sites, particularly Niagara Falls.

The ruling came as a result of an application of the Niagara Falls Power Company for permission to

use water power diverted from the Niagara Falls power resource through the city of Lockport. The power company sought to obtain the Lockport diversion at the same rate the water power Commission fixed for its last permit, namely 75 cents per horsepower, and it is expected that an appeal will be taken to the courts of the state from the ruling of the Commission.

Some indication of the significance of this ruling can be found in the report of the New York *Herald Tribune* that if the policy established is applied to future development of Niagara Falls capable of yielding 1,250,000 horsepower, the $5 rate will yield to the state almost $6,000,000 a year in revenue.

In plain words the question raised by this controversy is whether the state-owned power sites should be developed for the financial benefit of the taxpayers or of the ratepayers. It appears to be the doctrine in New York, although questioned by some, that these water power sites are owned by the state. Governor Roosevelt, in his campaign for the gubernatorial office, announced his intention of following in the footsteps of the policy adopted by his predecessor Governor Smith—that is to safeguard the rights of the state in water power resources from being alienated by the control of private interests.

Aside from this position, however, the next consideration is a question of method. Assuming that the state retains its active control of these resources and discourages long term leases to private interests, should the terms upon which the state does permit the development of these resources favor the taxpayer or the ratepayer? The recent decision would seem to favor the taxpayer.

It is obvious that the utilities compelled to pay higher rates for state power rights will be compelled to make a corresponding adjustment in the rates of the ultimate consumers. Nevertheless it was the opinion of the majority of the Commission that the people in the state are entitled to a substantial *direct* revenue from the state water power resources.

Attorney General Hamilton Ward, the only one of the three members of the Commission voting against the decision, took the position that the benefit to the state from the development of the resources should be *indirect*. Mr. Ward is of the opinion that this could be done by encouraging industrial development through private development of water power at a low rental from the state. He pointed out that in this way the state would get an indirect yield of revenue from its water power in the form of taxation on new property assessments that would thus be created.

According to press reports there has been an unfavorable reaction to the decision in western New York especially along the Niagara frontier where such cities as Buffalo, the home of Mr. Ward, are hoping that an early development of Niagara Falls will be reflected in industrial growth in that territory.

The historical background for this controversy is fairly well known to New Yorkers and should be interesting to others as well. The former Governor Smith, while in office, initiated a water power policy favoring development of water power by the

state and distribution by private concerns. In his attempts to promulgate this policy, however, he was blocked in the legislature. In turn Governor Smith thwarted moves to lease power sites to private companies for long terms. This was the situation when Governor Roosevelt, sharing Governor Smith's views, succeeded him to office and it is probably correct to say that this deadlock still continues.

It has been suggested that the recent decision may possibly have the effect of retarding full hydroelectric development by private interests by making it less profitable with a consequent gain of ground by those favoring ultimate development by the state. It is also significant that the decision departs to some extent from the policy hitherto established by State Commissions giving consumers living near the power sites the benefit of cheaper rates in proportion to their proximity to the sites. For it is clear that the additional revenue will ease the burden of the state's taxpayers at large without regard to location.

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Municipal Water Works Employees Must Pay a Federal Income Tax

WHILE it has nothing to do at all with utility regulation a recent ruling of the Commission of Internal Revenue in Washington has stirred up considerable comment among public utilities, particularly municipal utilities. This ruling was to the effect that employees of a municipal water works plant should be required to pay Federal income tax.

Many years ago, in fact shortly after the institution of the Federal taxing system under the United States Constitution, the Supreme Court decided that the states could not lawfully tax any branch of the Federal Government operating in the states or any officer or employee connected with such a governmental branch. In this way the salaries of Federal employees all the way from the district judges right down to letter carriers are exempted from local taxation.

The theory of this exemption is that the work of the Federal Government should not be hindered or obstructed in any way by the state or other local governments. In other words, if Congress sees fit to pay a Federal judge so much per annum, the action of the state in attempting to tax that income would in effect reduce the net profit to the justice, and to that extent, interfere with the amount that Congress intended he should have as compensation for the work he performed for the Government.

Naturally enough the converse of this proposition was that the Federal Government should not tax state, county, or municipal governmental business, or the agents necessary to carry it on. That is why the income of state judges given in compensation for their duties performed within the state as judges may not be taxed by the Federal Government. To this may be added the long list of county employees, township employees, and employees of other subdivisions.

But what about municipal plants? Long ago our courts made the distinction between the "governmental" and "proprietary" capacity of the state and municipalities. It was recognized that a state or city, aside from their governmental functions, might lawfully engage in any business they choose. Upon this distinction the recent ruling appears to have been made. In other words, the employees of the municipal water works are no more entitled to income tax exemption than the employees of a privately owned plant. It is not a governmental business.

The Monthly *Bulletin* of The American Water Works Association for July announces that Mr. Charles S. Denman, General Manager of the Des Moines Water Works, has appealed to the United States Board of Tax Appeals, where the case will come up for trial this fall and it is expected that a decision will be given in 1930.

Nebraska Enforces Compulsory Indemnity Insurance Law for Hired Automobiles

OBSERVERS who have a flare for writing philosophical commentaries on the trend of legislation all seem to agree that there is a strong movement toward compulsory insurance for automobiles. They tell us that this is not the result of any separate agitation along the lines of insurance for insurance sake, or as more skeptical citizens might surmise, for the sake of the insurance companies, but rather a part of the rapidly progressing general sentiment for social legislation that will distribute economic burdens equally upon that part of the community causing them.

For example, many years ago when a working man was injured and disabled through the carelessness either of himself or of his fellow employee, the master could not be called to pay because the law at that time did not hold the master responsible for the negligence of the injured party or of his fellow servant. As a result of this many disabled working men and their families became public charges.

Then appeared compulsory workmen's compensation insurance laws which awarded fair compensation to the injured man regardless of the negligence causing the injury. In other words, industrial accidents were recognized as inevitable social misfortunes which should be borne by commerce rather than by the state.

Likewise automobile accidents are coming to be regarded as inevitable social misfortunes the burden of which should be shared by all operators rather than just the unlucky ones.

So far, Massachusetts is probably the only state that has attempted full, compulsory insurance laws applicable to all automobile operators, and the success of this experiment in the Bay State has been questioned in some quarters. However, other states, New York, for instance, are now trying compulsory automobile insurance in a modified form. This is particularly true of commercial automobiles.

In most states automobiles operating for hire are required to carry in-

demnity insurance. The obvious purpose of this is to protect citizens generally from the burden of accident resulting from the operation of these vehicles in the event that the operators are not financially responsible.

A very good discussion of the purpose and method of this type of legislation is to be found in the recent opinion of Chairman Curtiss of the Nebraska Commission prescribing conditions and regulations relative to the furnishing of liability insurance by taxicabs and public cars in conformity with a recent Nebraska statute. The Commissioner carefully and competently analyzes all the different elements to be taken into consideration in enforcing such a law.

Among the more interesting points raised was an objection by some operators that the cost of providing any insurance might be so burdensome as to put the operators out of business, resulting in a confiscation of property that could not constitutionally be enforced by law. The Commissioner stated that it was not within the province of the Commission to declare the law unconstitutional but that it should keep in mind the cost of protection, so far as possible, in fixing the amount of insurance necessary.

The Commission finally agreed that a policy covering $5,000 for death of one person and $10,000 for the death of more than one would be sufficient protection. Operators of businesses renting cars on the "drive-it-yourself" plan were exempted from the statute.

Here is a significant passage from the opinion:

> "It was also argued that the amount of insurance or other protection required should be graded on a basis of the size of the city, the operators in the larger cities being required to provide greater protection than those in smaller cities. Again, the Commission cannot agree with this logic. A person injured in a smaller town or city, is entitled to the same quantum of protection as a person injured in a larger city. Undoubtedly, the likelihood of accident is greater, the larger the city, but this factor is one which should be given consideration in the amount of premium paid—a matter over which the Commission has no control."

Re Liability Insurance for Taxicabs and Public Cars (Neb.) Resolution No. 110.

An Extra Charge for Dial Phones on Private Switchboards Is Approved

AUTOMATIC operating telephone stations, vulgarly known as "thumb-twisters" have been in use in the United States for about thirty years. This equipment is now either being operated or installed in practically all of the larger cities and is supposed to furnish a superior grade of service. For several years it has been in process of installation in St. Louis and will be for several years.

Before the days of the thumb-twister, a hotel guest or employee of a business big enough to have a switchboard would call outside stations by asking the operator at the private branch exchange for an outside connection and then call his number through the telephone company's operator. With the installation of

the dial automatic switching it became necessary for the hotels and business houses either to have a dial phone in every room or at every desk, or else have the parties call their number to the operator of the private branch exchange and have her call the number from her dial. Obviously this slowed up service at hotels and business houses.

Not long ago the city of St. Louis complained to the Missouri Commission that this situation caused a reduction in service previously granted to private branch exchanges and that the company should furnish without extra charge dials to all phones attached to the private board exchanges in order that the service might be the same as that received previous to the installation of automatic switching. The company had placed an extra charge of 25 cents a month per dial telephone for all such installations.

The Missouri Commission denied the complaint of the city and sustained the right of the company to place the extra charge for such service, stating

> "The telephone instrument used on individual line service must of necessity be equipped with a dial in order that they can secure this service but this is a necessity that all require, whereas but few of the stations on the private branch exchanges do. The greater portion of said stations will not require the installation of a dial and the unnecessary expense of installation should not be put upon the subscribers of the exchange. This fact has been recognized by other Commissions and the dial charge has been approved and is in force in forty-four of the United States and also in the District of Columbia. The Commission is of the opinion that the charge is just and reasonable and should not be disturbed."
>
> "The Southwestern Bell Telephone Company could, if thought for the best interests of all concerned and in order to be able to furnish a superior class of service in line with the latest developments in the art of telephony, change its system from a manual to the automatic. This is a managerial matter and, in the absence of any proof that the charges for service as a whole would be increased or that the interests of the public will be injured by such action, the Commission is of the opinion that it should not intervene."

Private switchboards are usually installed in large businesses and hotels for the purpose of intercommunication within the premises without the necessity of going through the company's central exchange. In this way also hotel operators may check the outgoing calls of their guests. It was brought out in the proceeding that many private branch exchanges such as those located in hotels did not care to have dials installed on the individual stations because it would render it impossible to check the use of the phone for long distance calls. Likewise larger commercial houses did not care to have all stations equipped with dials in order to keep down the private calls of their employees.

A point not noticed in this case but certainly material to the problem is the question of revenue to the hotel operators. Most hotels charge guests 10 cents for ordinary outside local calls that could be negotiated through a pay station for 5 cents. While the difference is not all net to the hotel operator who must use some of this

amount to pay for the maintenance of his private branch exchange system, yet in very many hotels these calls yield quite a substantial revenue.

If dial phones connecting guests directly to outside stations are installed in their rooms, the hotel will lose not only this net revenue but also the portion of it used to defray the expense of private exchange equipment. This will result either in slightly increased room rates or reduced profits. No wonder the hotel men complain about the dial phones.

St. Louis *v.* Southern Bell Teleph. Co. (Mo.) No. 5547.

A Puzzling Excess Radius Telephone Rate Is Disapproved

THERE is probably no utility service so reciprocal in its benefits between patrons as the telephone. All other things being equal a large independent company can render more economical service than a smaller one—an affiliated electric company more economical than an independent one. So also with gas, traction, and, according to some, even water companies—the larger the volume of the service, the cheaper and better the individual service is likely to be.

But the electric, gas, and traction patron derives his benefit indirectly. When more people take the service it reduces operating expenses—or more correctly—the operating expenses do not increase in proportion to the volume of service. This permits economies that eventually find their way into the bill of the consumers and so, indirectly, everybody profits.

The increased value of telephone service is not indirect. In fact, when the service increases very often it costs more. Rural service is ordinarily much cheaper than telephone service in New York, Chicago, or other large cities. The increased value comes from the fact that every time a new subscriber is added to the central switchboard the value of each and every subscriber's service is proportionately increased. The citizens of Rochester, N. Y., pay $4.75 a month for a single party telephone. The citizens of a certain small New Jersey village pay $1.50 a month.

But, the Rochesterian has the liberty of calling any one of 82,500 stations on the central exchanges as often as he pleases without extra charge. He has, through these stations, a direct contact with 300,000 other Rochesterians and a potential contact with the entire population. The New Jersey citizen can call only 200 stations connecting only 600 people without extra charge. He must share his line with sixteen other subscribers. Surely the Rochester service is well worth the $3.50 a month difference.

It will be seen from this that, under ordinary telephone rate schedules, short line subscribers are made to bear a part of the cost on the lines of the long line subscriber. This is as it should be in view of the reciprocal benefits just mentioned. It is just as much advantage for the down town citizen to talk to the outlying sections as it is for the outlying sections to talk to the down town citizen. And so we have the uniform rate area which is not bound by corporate limits or natural boundaries,

but by the more logical limitations of the metropolitan area. Thus the Bronx, the Battery, and Brooklyn all talk to each other for 5 cents.

But like all good things, there is a necessary limit. A lone farmer 5 miles from Rochester could scarcely be such a valuable addition to the service of that community that the general subscribers should carry the added expense of constructing his extension. Likewise a suburb five miles away is stretching it too far. Drawing lines between suburbs which should be and those which should not be included in the free exchange area is a delicate problem.

To those rural communities having many isolated lines the "excess radius charge" has been the only solution but even that must be handled carefully. Many varieties of the excess radius charge have been attempted. Here is a proposal recently made by a company in North Dakota:

> "Select any number of points on a telephone line. Divide the mileage in use beyond each point by the number of subscribers beyond, tabulating the results. Deduct 1.25 from each quotient, and the excess, if any, shall be the monthly charge for excess line rental. Use the combination giving the maximum revenue on each line, except that no subscriber may be charged in more than one combination."

Refusing to approve of the plan, Commissioner Harding said:

> "The formula was to be used with the assumption that an allowance is made of 1¼ miles of line to which each rural subscriber is entitled.
>
> "Taking this so-called formula into consideration, we find that there are several defects in its operation that make it objectionable to this Commission. First, the rate to any one particular subscriber would be variable; second, the formula is capable of several interpretations and it is doubtful if any two people would interpret it alike thus causing endless complaints; third, it takes control of rates out from under this Commission, which is illegal. The application of the formula will, therefore, be denied."

Re Amenia Teleph. Co. Case No. 3043.

A Modification in the Michigan Bell Telephone Decision

THE press reports a rather important modification in the recent decision of the supreme court of Michigan on the controversy between the attorney general of that state and a local telephone company. In its decision last April (State ex rel. Potter *v.* Michigan Bell Telephone Company, P.U.R.1929B, 455), the company was "ousted of the right to have credit in a computation of rates for payment to the American Telephone & Telegraph Company" under its general licensee contract upon the theory that the latter, owing 99.99 per cent of the former's voting stock, was really dominating it and carrying on the business.

Now it appears that the local company will be permitted to include as an operating expense a reasonable sum "compensating the national company for actual services performed." The court continues, however, to disregard the corporate fiction as existing between these two companies.

GOVERNMENT REGULA-

The American Federation of Labor has behind it a contradictory record; at times it has endorsed the present system of regulation by Commissions—and at times it has advocated Government ownership. The reasons for these shifting commitments and the influences that will probably be determining factors in its future activities are here analyzed by an authority who has specialized in this field of economic research.

By LYLE W. COOPER
PROFESSOR OF ECONOMICS, MARQUETTE UNIVERSITY

RECOGNITION is growing of the significant part played by group interests in the determination of legislation and of governmental administrative policy on a wide range of public questions.

To make certain technical questions the football of "bloc" political action is not always conducive to the best solutions. Yet, especially where the experts themselves have difficulty in reaching anything approaching unanimity of opinion, it is unavoidable that interested groups should take a hand in attempting to make effective their own views through legislative or administrative channels. And perhaps the "trial and error method" which this state of affairs entails, in spite of the mistakes which are made, in the final analysis is the most conducive to a satisfactory social outcome. Certainly, in a democracy, such a method is the only one possible.

ORGANIZED labor is not the least among the groups possessed of political influence. And among the matters calling for correct governmental policy one of the most important is the method of dealing with public utilities.

It, therefore, becomes of some interest to discover, if possible, the view of organized labor on this problem. At first thought, this might appear to be a simple task. But when one delves into the literature, certain complexities and even contradictions are disclosed.

Before setting forth the salient features of the record, a word of explanation is necessary. In this analysis, discussion is confined to the American Federation of Labor. While the Federation does not include such leading organizations as the railroad brotherhoods and the Amalgamated Clothing Workers, it comes nearer embodying the voice of organized labor than any other group.

Confining our attention to the Federation, however, does not entirely simplify matters, because the Federation is comprised of more than a hundred national and international unions, each of which is free to hold views on public questions at complete variance with the view dominant in the Federation. But the Federation's position, because it does represent

TION—OR OWNERSHIP?

The Attitude of Union Labor Toward the Public Utilities

majority sentiment, as decided at the annual convention, is of value in revealing the stand representatives of the Federation will take before legislative committees, and, to the extent there exist "labor blocs" in Congress and in the state legislatures, the probable attitude members of these "blocs" will assume.

Of course, it is evident that the Federation is interested in some questions more than in others; on this account, the political pressure it attempts to exert will vary correspondingly.

For example, such questions as immigration restriction and limitation on the use of injunctions in labor disputes are regarded at present as much more vital to the group interests of organized labor than the policy Government adopts toward public utilities.

The explanation of this difference is not hard to seek. All union members, whether they are Republicans, Democrats, Socialists, or Independents, are likely to regard the position of their unions as strongly affected by the supply of would-be competitors for jobs—hence the concern with immigration. But their political affiliations may be the very factors which will help divide them upon such issues as Government ownership or the kind of regulation appropriate to utilities. However, even on issues of this latter nature, we will discover that the central interest of unions to establish and maintain collective bargaining goes far toward coloring their attitude on the proper policy to be pursued toward public utilities. As a background for the present, a brief historical sketch is of value.

IN the early days of the Federation, which was established in 1881, a number of pronouncements were made favorable to Government ownership in certain industries. This procedure was advocated for the telegraph in 1883.

In 1892, the same policy was endorsed for both the telegraph and telephone.

In 1894, caused in no small part by the devastating consequences of the panic of 1893 and the depression following, Socialists in the annual convention nearly succeeded in obtaining support for the "collective ownership by the people of the means of production and distribution." Along with this blanket proposal were defeated demands for the "municipal ownership of street cars, and gas and electric plants for public distribution of light and power," and "nationalization of telegraphs, telephones, railroads, and mines." These were three of the planks in a proposed legislative program which included eleven different objectives. Because the one relating to collective ownership of the means of production and distribution was unacceptable to the majority of

the delegates, by means of parliamentary maneuvering all the other planks were also voted down. But at the next convention, in 1895, the nationalization of telegraph, telephone, railroads, and mines was advocated, and, in 1896, the delegates went on record in favor of the public ownership of all utilities, "municipal, state, and national," which were in the nature of monopolies.

WITH returning prosperity in the late nineties, demands of the nature described above were made with diminishing frequency, though as late as 1917 the old demand in regard to the telegraph and the telephone was renewed. The Federation in 1920 and again in 1921 endorsed the Plumb Plan for the railroads.

BEFORE examining the present attitude of the Federation, it is worth indicating why public ownership seemed to be attractive in those earlier years. One reason goes back to the central concern with collective bargaining. The unions involved in the telegraph and telephone industries, with the exception of railroad telegraphers, had strong grievances because of opposition to union recognition and collective bargaining on the part of the companies. In retaliation, the unions asked for Government ownership, apparently feeling convinced that such a change would bring about a more friendly attitude toward their organizations. Similarly with the railroads: under Government war-time operation, the unions felt that the Government had treated them better than was their experience under private management—the Government had gone so far as to encourage the establishment of unions among weaker groups, such as the maintenance of way workers.

Consequently, when the Plumb Plan was sponsored by the brotherhoods, the shopcrafts in the Federation followed suit. At the Federation convention it is a common practice for delegates of the various affiliated unions, in furthering the measures in which they are directly concerned, to present their case to the other delegates in order thereby to gain additional support. Customarily this support is forthcoming, for on these questions it is assumed by the convention that each organization "knows what is best for it."

SOMETHING occurred in 1920, however, which is indicative of a shift from the eighties and nineties when public ownership in a range of industries was endorsed. A long debate took place on the wisdom of supporting the Plumb Plan. President Gompers and other prominent leaders fought hard against affirmative action. They were voted down, but it was made clear that many of those who voted in the manner the railroad shopcrafts desired did so only on the general principle that an organization was entitled to support for any measure which it considered vital to its welfare. And it was further brought out that even though Government operation of the roads had been satisfactory to the unions concerned, there was a considerable fear of the consequences to labor which might flow from the Government being placed in the position of employer.

There were various reasons for

The American Federation's Vacillating Commitments on Private *vs.* Government Ownership—

1883; advocated government ownership of the telegraph.
1892; advocated government ownership of the telephone.
1894; refused to endorse project for the government ownership of utilities.
1895; sought "nationalization" of railroads.
1896; endorsed public ownership of all utilities.
1917; renewed demand for public ownership of telephone and telegraph.
1920; endorsed the Plumb plan for the government operation of railroads.
1922; endorsed the project of turning over Muscle Shoals to private development by Henry Ford.
1923; recommended the state development of water power.
1925; endorsed the project for the government development of Muscle Shoals.
1928; refused to endorse Swing-Johnson bill for public ownership of the Boulder Dam project.

this. One was the experience of the postal employees under Postmaster General Burleson's administration: their unions were not dealt with and wages were permitted to lag far behind the cost of living—in fact, so far behind that comparisons with what was taking place in many private industries were very unfavorable to this important branch of the Government service. Moreover, the earlier attitude, which was inclined to take it for granted that Government was an agency to be relied upon as of direct benefit to labor, had been somewhat dissipated by certain drastic injunctions and other court actions.

So we find, for example, that President Gompers, who stood for Government ownership of railroads without a qualm in the nineties, by 1920 had become a vehement opponent who declared:

> "If I were in a minority of one in this convention, I would want to cast my vote so that the men of labor shall not willingly enslave themselves to Government authority in their industrial effort for freedom."

THIS disillusionment with, or at least suspicion of, Government had been expressed before 1920. As early as 1913, the convention went on record in the case of municipal utilities to the effect that the unions' stand in regard to public ownership would be conditioned by the attitude of city managements towards organized labor. This statement of policy, sponsored by the street railway workers union, is an especially good illustration that organized labor's attitude is mainly motivated by the presence or absence of collective bargaining—that the union position swings largely on whether private or public manage-

ment has most to offer in the way of benefits.

The union view is determined primarily by what is regarded as best for the membership as producers rather than as consumers.

ANOTHER factor which has made for this opportunism is as follows: As the Federation of Labor has grown from its rather meager beginnings and has more and more taken on institutional aspects, a sense of responsibility has made it wary of sweeping declarations which are calculated to antagonize employing interests. And present indications, whatever the remote future may hold, point to a long-continued dominance of private ownership.

In the meantime, the unions desire to expand; and while there are large areas of American industry where unionism is practically nonexistent, hopes have not been given up that this will change. The Federation through President Green and other leaders for a number of years has been strongly emphasizing the benefits to be derived for management from co-operation with organized labor, maintaining that considerable gains in the way of productive efficiency are to be secured through such co-operation. The shift from unionism as almost solely a fighting agency, they maintain, can be achieved only when the essential desirability of unionism is recognized.

ALL of this involves a strong belief in voluntaryism as contrasted with Government action, and a conviction that the salvation of labor is to be brought about for the most part through the united efforts of wage earners. Among other manifestations of this unwillingness to lean heavily on Government is the Federation's position with respect to anti-trust legislation.

From the beginning the Federation failed to join in the demand for such legislation, and in recent years has asked for the repeal of laws designed to facilitate "trust-busting." While a factor in this attitude has undoubtedly been the fear of legal actions against labor unions on the ground of restraint of trade, another strong consideration has been that "big business," by stabilizing competitive conditions, can do much toward establishing standards of work and wages superior to those which too often obtain when competition becomes cut-throat.*

CURRENT public interest is largely directed in the utility field toward the generation and distribution of electric power. The Federation has given attention to this important matter, but its position is not altogether clear.

First, it is significant that the whole program of conservation early received endorsement. From this as a point of departure, when the development of hydro-electric power become a leading issue, it was natural that interest should develop in this aspect of the general power question. President Gompers especially became deeply concerned with all of the phases involved. He envisaged revolutionary changes in industrial technique

* See "Organized Labor and the Trust," *Journal of Political Economy*, December, 1928, where the writer has gone into this rather surprising attitude of organized labor toward "the trust" in some detail.

and accompanying social changes. During the last two years of Gompers' life, in 1923 and 1924, the *American Federationist,* which is the official journal of the A. F. of L., carried frequent contributions from him dealing with the possibilities of "Giant-Power." In keeping with his principal interest, the major part of what he wrote had to do with the probable results for the working class. He urged in this connection the general doctrine he was busy in enunciating at the time: that full benefits to society could be realized only by treating labor in its organized capacity as a major instrument in effecting the impending basic changes.

President Gompers refused to be dogmatic about the part Government should or should not play. At the same time, he was firm in his view that publicly owned water sites should not be alienated, and he indicated some disposition to be critical of what impressed him as unnecessarily high rates charged to domestic users of electricity.

ATTENTION to the views of President Gompers is warranted because he was such a leading figure in the Federation and because on this particular question he seems to have been largely responsible for awakening interest among unionists in power development. However, he and the Federation were not synonymous, and we are concerned here with finding pronouncements or expressions of policy put forward by the highest authority in the Federation, its annual convention.

The convention of 1923 expressed adherence to a policy which might lead one to believe that a complete reversion to the Federation's earlier inclination in favor of public ownership was in process. Delegates from the Electrical Workers and from the Seamen presented a resolution which endorsed the principles contained in the proposed California Water and Power Act which, among other things, contemplated public development as well as ownership. The resolution, a long one, cannot be reproduced completely here. Its essential position is contained in the following:

> " . . . we recommend to all citizens in all states a program of state conservation through complete use and development and control of the waters of the state . . . for the service of the people at cost, as opposed to corporation development and control of water resources for private profit . . . ; we individually and collectively urge upon our respective state legislatures and upon the Federal Government . . . the necessity for a co-ordinated public development and control of said water resources for the service of the people at cost."

The resolution was "unanimously adopted."

¶ *"The union view is determined primarily by what is regarded as best for the membership as producers rather than as consumers. . . ."*

BUT the proof of a general policy is its concrete application. The two hydro-electric proposals most widely discussed in recent years are those relating to Muscle Shoals and to Boulder Dam.

In 1922, the year preceding the adoption of the resolution quoted above, the Federation convention, in response to the requests of organized labor in Alabama, endorsed the bill in Congress which would have turned over Muscle Shoals to Henry Ford. In 1923, the same year, the general policy of state and Federal development was subscribed to, the Executive Council of the Federation was authorized by the delegates "to deal with the subject as subsequent developments may warrant."

By 1925, the discovery was made that there was some connection between the general policy set forth two years earlier and the specific problem of Muscle Shoals: the committee concerned recommended "that this convention reaffirm the position of the Portland [1923] convention . . . and instruct the Executive Council to do its utmost to have any legislation that may be enacted . . . relating to Muscle Shoals conform to the principles" adopted at Portland.

This recommendation was also "unanimously adopted."

At the 1926 convention, a resolution was presented by delegates from Alabama which in substance embodied the policy of 1923. On this occasion, however, the committee reporting out the resolution thought the whole question of the Federation's policy on legislation affecting Muscle Shoals should be left to the discretion of the Executive Council. In 1927, the Executive Council was instructed to "watch the situation closely in . . . Congress, to the end that whatever legislative action is proposed it will conform to organized labor's idea, and for the best interest of the general public."

IN view of the actions of the conventions from 1922 to 1927, there might be some question as to what exactly "organized labor's idea" was in regard to Muscle Shoals. Diligent search in the *Convention Proceedings* for 1928 does not help to answer the question, for no reference was made to Muscle Shoals. However, in the *American Federationist* for April, 1928, it is stated editorially that:

> "The Executive Council . . . at its last meeting endorsed completion and operation of the Muscle Shoals undertaking by the United States Government and we hope this policy will be speedily approved by the House of Representatives. . . . It is of fundamental importance that we should have measuring rods for both standards of service and prices in order to insure fairness both to the utilities and to the consumers."

NEITHER the general declaration of 1923 nor the action finally taken on Muscle Shoals appears to have influenced the convention in its position relating to Boulder Dam. The question was discussed at the convention of 1927, and the delegates listened to an address of Senator Johnson of California. The whole matter was referred to the Executive Council, as it was understood that the project was favored in a general way. In 1928, in place of a resolution which endorsed the Swing-Johnson

"ORGANIZED labor stands for the most thorough-going kind of Government control . . . It wants industry honestly and fairly conducted, with freedom for the workers and room also for normal, natural economic development and change. It is the enemy of autocracy and bureaucracy alike and it sees in Government ownership no necessary remedy. . . . In so far as industry is centralized . . . Government control will have to be centralized or abandoned."

—SAMUEL GOMPERS
LATE PRESIDENT, AMERICAN FEDERATION OF LABOR

Bill then before Congress, the committee substituted a declaration previously adopted by the Executive Council. This declaration, after endorsing the project and asking that "such safeguards be thrown around it as to fully protect the interests of all the people," advises that Boulder Dam be "placed under the direction, control, and authority of the Federal Power Commission."

In explaining that the committee report did not endorse the Swing-Johnson Bill which called for Government distribution as well as development of power, Matthew Woll, chairman of the committee, stated:

> "The declaration does not say the means or methods that shall guide us . . . the Council outlines principles that should govern the regulation and control of the Colorado waters . . . and does not indicate how these principles . . . shall be put into effect, nor does it endorse any specific legislation on the subject."

IF there is difficulty in understanding why the same general policy is not as appropriate to Boulder Dam as to Muscle Shoals, it should be realized that the two projects involve different practical problems within union circles. Delegates from Arizona and certain other states, reflecting the dominant opinion in the communities from which they came, strongly opposed the whole program which the Californians desired. This created a delicate situation which called for careful stepping by the convention—otherwise, union people in some states were certain to be disgruntled.

The situation serves to call attention to a point made earlier in this account, namely, that just as the members of other groups do not always see eye to eye on every subject which affects them, organized labor is also subject to conflicting interests within its own ranks. And when opinions become too divergent, it may be expedient to side-step some of the more controversial points at issue.

As for Muscle Shoals, the shift from endorsing the turning over of this project to Henry Ford (on terms much more generous than those contemplated under the Federal Water Power Act) to the stand in favor of Government operation along the lines

How the Executive Counsel of the Federation Felt Six Years Ago—

"THE largest freedom of action, the freest play for individual initiative and genius in industry, can not be had under the shadow of constant incompetent political interference, meddlesomeness, and restriction."
—EXECUTIVE COUNCIL OF THE AMERICAN FEDERATION OF LABOR, IN 1923

proposed by Senator Norris—explanations can also be offered. When the Ford offer was up for consideration, a strong factor with organized labor in the South was the belief that, in spite of Ford's not dealing with unions, his entrance into the southern field would mean good wages and hours. Later, when Ford had disappeared from the picture, and the alternatives appeared to be development and operation by the Government or by certain private interests deemed "unfriendly" to organized labor, labor preferred to take its chances with the Government.

This again serves to show that in matters of the sort we are examining a primary consideration is the outcome the unions anticipate with respect to collective bargaining, and, as a second best objective, the highest standards obtainable in the absence of collective bargaining. This attitude may seem to subordinate unduly other considerations; but it is more or less the position interested parties habitually take, doubtless doing so in the firm conviction that measures for their own benefit coincide with the best interests of society at large.

THE passage of the Federal Water Power Act was opposed by the Executive Council, as indicated in its report to the convention of 1920. Apparently, too, on questions of valuation, the rules laid down by the United States Supreme Court in the Southwestern Bell and in the Indianapolis Water Cases do not meet the approval of the Federation—at least, this is the position of President Green who favors the fixing of rates so as to permit "a fair return upon the capital prudently and honestly invested," (*American Federationist*, March, 1927). And in the same journal of February, 1929, while the O'Fallon Case was still pending, President Green stated that "there is involved a far-reaching principle of valuation which, if approved for the railroads, would be inevitably extended to utilities and would practically nullify regulation."

A word of caution needs to be added here: on questions of valuation the Federation convention has not taken a definite position.

ON the general subject of regulation, President Gompers in the *Federationist* of November, 1924, wrote as follows:

> "Organized labor stands for the most thorough-going kind of Government control . . . It wants

industry honestly and fairly conducted, with freedom for the workers and room also for normal, natural economic development and change. It is the enemy of autocracy and bureaucracy alike and it sees in Government ownership no necessary remedy. . . . In so far as industry is centralized . . . Government control will have to be centralized or abandoned."

Whether the centralization of control referred to means Federal control is not made clear, and in another passage Gompers expressed his "unqualified" opposition to Government operation because "it might interfere with the right collectively to quit work."

Naturally President Gompers was not speaking in the authoritative manner which is present when the Federation convention makes a declaration of policy. But there can be no doubt that regulation is strongly adhered to by the Federation, and the only recent instances where Government operation has been endorsed are the special cases of the Plumb Plan for the railroads and for Muscle Shoals.

In conclusion, because of the importance of the subject and because what Gompers had to say in this connection appears to well summarize a point of view which would doubtless receive whole-hearted support from the Federation, the "principles" he laid down for governing the development of electric power are deserving of attention. The principles are embodied at length in an article entitled "The Future of Giant-Power" which appeared in the *American Federationist* for August, 1924.

"1. Functional organization of every essential factor concerned in the industry, so that these organizations may serve as recording centers for the experience of each group necessary to conscious progress—trade associations, engineering and professional societies, trade unions, etc.

"2. The voluntary association of the national organizations of these groups in a national industrial council thus making the full experience of the industrial world available for development of the best policies for production and control.

"3. That each power undertaking and power plant develop local organizations along similar lines.

"4. That trade unions shall develop full responsibility for negotiating all agreements determining wages, hours, and conditions of work, for educating employees in the methods and processes of co-operation for the elimination of industrial waste and the development of more efficient production and for assuring a square deal to labor.

"5. That such regulation as may be necessary for assuring the best social use and conservation of power resources and service at equitable cost be vested in governmental agencies authorized to determine conditions on which franchises shall be granted for specific periods of time and to determine equitable rates, pass upon bond and stock issues with unrestricted powers to examine records and to prescribe forms of records.

"The power industry is a public utility and hence foregoes claims urged by private business. Water power, one of our most important national resources, must be included in national conservation policies, hence ownership must be reserved to the people and decision made in each undertaking as between private and public initiative and development."

PUBLIC UTILITIES FORTNIGHTLY
MUNSEY BUILDING ✣ WASHINGTON, D. C.

August 22, 1929.

Dear Sir:

The United States Senate was considering the tariff. Senator Shortridge of California had the floor. He turned aside for a few words on publicity.

"Pardon me just a moment," he said, "thinking of the great state to which we owe so much because of the great men born there and who spoke for her and for the Nation, thinking of the great men of Virginia, what would have happened if the debates in that connection had been known and been broadcast, attacked, ridiculed, condemned during the deliberations of that great body of great men?"

Well, you can draw your own conclusions.

In legislative matters in general, however, it is believed that discussion outside of legislative chambers as well as inside is desirable because the legislators are supposed to represent their constituents. Their constituents have the right to make their wishes known, by public debate, by letter writing, by conversation with their representatives, or even by lobbying.

A great many persons in this country think the same rule is applicable to questions under consideration by courts or other tribunals. But there the principle is, or should be, different. When a matter is referred to a court or a jury or a board of arbitration, or any kind of commission acting in a quasi-judicial capacity, the parties to the controversy are entitled to the independent judgment of those whose duty it is to render it.

What would happen if a newspaper discussing the evidence in an important criminal case should be thrust

into the hands of the jurymen just before they retired for deliberation? Or what would happen if, during the progress of the case before the evidence was all in, newspapers commenting on the significance of the testimony already produced were distributed in the jury box? This, of course, would be contempt of court which would be promptly punished. Even the newspaper discussion itself would be improper.

State Public Service Commissions act as arms of the legislatures. While administrative policies are under consideration, full and free discussion from any quarter is as proper and desirable as it is in the case of contemplated legislative action.

But State Commissions often act in a quasi-judicial capacity. They are called upon to decide questions in dispute between the utility companies and their patrons. Are these parties entitled to the independent judgments of the Commissions? The prevailing opinion seems to be that they are not.

We have seen newspaper discussions of the merits of controversial questions before the Commissions calculated not only to influence but to intimidate them.

Personally we are inclined to think this is in contempt of the Commissions, but perhaps that is not so.

Very truly yours,

Henry C. Spurr

HCS/R

WHY I BELIEVE IN STRICTER CONTROL OVER

The Channels of Information

New conditions, some of our legislators believe, point to the growing need of a proposed "Communications Commission." What these conditions are is here told in the form of an exclusive statement made to JOHN T. LAMBERT, special representative of this magazine, by the sponsor of Senate Bill No. 6,

Hon. James Couzens

UNITED STATES SENATOR FROM MICHIGAN

THOSE commentators upon public events who observe that "a surpassing interest" has been created by the so-called Couzens bill for Government regulation of the corporations engaged in the transmission of intelligence by wire and by wireless are quite within the realm of accuracy.

We are living in the most striking interval of an age of vast consolidation of wealth and financial and political influence. The interests which come within the purview of this proposed regulatory legislation constitute perhaps the most powerful group of this era. They possess resources which are well-nigh incalculable. They have acquired potential financial values against which the resources of an ancient Midas would appear as but a beggar's penny. Within their grip has come the possibility of exerting an influence upon public opinion and political action which could sway the destiny of any democracy, for better or for worse.

It has been estimated that in excess of eight billions have been invested alone in the water-power corporations, which constitute but a single enterprise in the predominant group proposed to be regulated. The wealth and social influence of the telephone and telegraph companies are conceivable to the imagination of our people whose daily intercourse with each other depends upon those avenues of communication. And the radio has grown overnight to a position of consequence, rivalling the theater as a source of entertainment, the press of the country as a source of information, and the public forum as an agency for the control of political decision.

Any estimator who would guess the financial resources of these corporations and their kindred associates at in excess of one hundred billions possibly would be acclaimed as moderate.

IT is because of the wide public interest which arises that PUBLIC UTILITIES FORTNIGHTLY sought at first hand the views of Senator James Couzens of Michigan, author of this bill.

The Michigan Senator is a business man, who views the public utility through the eyes of one who has had broad experience with business problems and who, as mayor of Detroit, had very interesting experience with utilities as public servants. "These corporations are performing a function which is granted to them by the public through license and franchise," Senator Couzens said. "They are in fact doing a work which the public permits them to assume and which the public itself could have done through a system of public ownership and public operation had it so desired. They are the tenants of a public property, operating by virtue of leases authorized them by the public and which are revocable at the will and pleasure of the public. In return for the right granted them to perform these functions and to earn for themselves a reasonable profit in so doing, they are under moral and legal obligation to yield an efficient service to the public at reasonable rates and to abstain from any acts which might impair or destroy the public's rights. The public is, therefore, entitled to impose any form of regulation deemed to be necessary to maintain its own interests from abridgement or impairment.

"The title alone of Senate 6, the bill in which the proposed regulation is embodied, conveys the importance of the situation. It is a bill 'to provide for the regulation of the transmission of intelligence by wire or wireless.' In a democracy, the transmission of intelligence is one of the most important missions which can be performed. Democracy rests upon well-informed intelligence."

Of course what Couzens realizes is apparent but it is difficult to comprehend quickly the changed conditions. In the ancient days, intelligence was transmitted orally. Then came the period of hieroglyphics and stone carvings. The public print was followed by the telephone and telegraph and now we have, as one of the wonders of an advancing civilization, the radio as an imposing influence upon public thought and character, a medium combining the speed of the telegraph, the clarity of the telephone, and the wide appeal of the press.

"The conception of the founders of our country was that the best democracy possible would be derived from a people who possessed the greatest amount of information," the Senator suggested. "They guaranteed the right of free speech and of a free press for two purposes. One was that there should be no curtailment of thought or of the expression of thought by any individual in a democracy. The other was to defend the public against the formation of any autocracy which might control, hamper, or prevent free expression. It is but the essence of democracy that the people of today, through their Government, should regulate any corporation or group, which possibly could acquire dominion over the transmission of intelligence.

"The plain fact is that the system of regulation which I propose is already established. Radio is regulated by a Radio Commission. The telephone and telegraph companies presumably are regulated by the Interstate Commerce Commission. I propose that these duties and func-

Where the State Commissions Enter Into the Proposed New Regulatory Plans

"I AM an advocate of home rule. I believe that authority should be exercised nearest its source. Accordingly, it is provided in the bill that in the determination of interstate rates and related matters in the electrical power field, the authority shall be vested in commissions composed of representatives of the Public Utility Commissions from the affected states. It is also provided, however, that should they fail to act, the national Government shall act. This provision was necessary in order that any national right should be conserved and in order that the public should not be deprived of their right of regulation by any reluctant or recalcitrant state Commission."

—SENATOR COUZENS

tions shall be organized; that they shall be assembled in a single body, instead of being alloted as they are now, piecemeal, to a group of widely-diffused and scattered public agencies, some of which have other arduous and unrelated duties to transact. The Interstate Commerce Commission, for example, is thoroughly and deeply engrossed in its railroad work, which requires all of its time and attention. I am quite confident that an exhaustive search of the records would fail to disclose any important act of telephone or telegraph regulation ever exercised by that body.

"Frankly, I was attracted to what has now grown to be a situation of magnitude by the radio situation alone. It may be recalled that a Commission was established to 'regulate' the radio and that the authors of the legislation assumed that when the wave lengths were assigned and some bases of regulation ordained, the need of a permanent commission would have expired and its routine work could be transferred to the Department of Commerce. The Commission was revived or prolonged from year to year, however, and it now faces an automatic expiration on December 31st.

"Meanwhile, the radio industry has enormously expanded. Its influence has grown mightily. New problems arise almost daily for settlement. Radio transmission has become an expanding public function the extent of which can not be measured. I would consistently oppose the transfer of such vast power of regulation to any single individual. Human nature is not infallible. It is not above temptation, duress, or coercion. Wave lengths alone are of great value, as yet undetermined. To vest such a wide latitude of authority in a single individual would be dangerous to the country; it might prove harmful to the industry.

"Accordingly, I propose that the powers now vested in the Radio Commission, which is scheduled to die at the year's end, shall be transferred to a permanent commission which shall likewise have authority over the other groups which are also engaged in the

transmission of intelligence, whether it be by wireless or by wire. We thus would gather together the loose ends of a far-flung system which has the same basic purpose—the transmission of intelligence. There can be no doubt whatsoever that both the public and the private interests could be better disposed by a single body than by farming out this important business of regulation to a variety of commissions which have other problems to command their best judgment.

"THERE is a legitimate contention against the creation of new boards, bureaus, and Government departments in Washington. Contentions, however, depend upon the case in point. We have a flexible Government. We like to proclaim ourselves a progressive people. The future developments can not always be anticipated, and certainly we can not sit back idly and say either that there shall not be regulation or that a new industry shall not be permitted to live and grow merely because our feeble imagination had not calculated its possibility.

"I WAS moved to propose the regulation of electrical power in this Commission because the subject is identical. Basically, it deals with electrical energy. The present power Commission consists of three cabinet members who are so preoccupied by their other governmental undertakings that they confessedly perform but a routine service in the regulation of water-power utilities. They are called upon to decide the grant of public water-power sites from the people to private interests and these sites are of immense value to the public, but they have to rely largely upon subordinates for information, for counsel and advice. Regulation of the water-power industry should be intrusted to a special Commission which has the training and special equipment to deal intelligently in matters of such vast moment. I am quite confident that the three cabinet members would gladly be relieved of this task.

"The amount of electrical-power energy which will flow through interstate commerce is steadily increasing. Possibly the power to be generated at Boulder Dam will cross the lines of a half-dozen commonwealths. I am advised that in the development of complicated business relationships under the modern system of holding companies several situations have arisen which render null and void all efforts at regulation of rates and service in behalf of the public. It has been held, I think, that if a generating corporation in one state delivers power to the people of another state, the regulatory officials of the latter state can go to the source of the power in determining a fair price to be charged the consumers. But if a distributing corporation is formed, the regulating officials can not go beyond that corporation in its efforts to ascertain the costs of distribution and production and, therefore, to fix a fair rate. It thus will be seen that the creation of a new corporation not only devises one new agency through which to collect a dividend at public expense but actually thwarts the attempt of the people at fair regulation.

"I AM an advocate of home rule. I believe that authority should be

exercised nearest its source. Accordingly, it is provided in the bill that in the determination of interstate rates and related matters in the electrical power field, the authority shall be vested in commissions composed of representatives of the Public Utility Commissions from the affected states. It is also provided, however, that should they fail to act, the national Government shall act. This provision was necessary in order that any national right should be conserved and in order that the public should not be deprived of their right of regulation by any reluctant or recalcitrant state Commission.

"While maintaining the doctrine of state's rights, I have had experiences with the methods whereby a matter, which seems to be purely intrastate on its face, is in fact a matter of interstate importance and effect. An intrastate railroad might be so loaded by the excessive and needless appendages as to become an unwarranted burden upon the 'through traffic' which used the road as a connecting link. It accordingly became necessary to grant authority to the Interstate Commerce Commission to decide whether public convenience and necessity demanded the building of an intrastate railroad.

"In the hearings so far held upon the bill there has been no general assailment or opposition to its propriety. There has been no general question of the authority of regulation contained in it. There has arisen as yet but a single division of thought, and that is in relation to the provision prohibiting consolidations of ownerships and services of corporations which transmit intelligence by wire with those which convey intelligence by wireless.

"IT may be recalled that there is a movement to effect consolidation of the Radio Corporation of America and the International Telephone & Telegraph Company, and the existing law provides that such mergers must be prohibited.

"That situation evokes the divergent thoughts.

"Originally, it was maintained that competition would be best guaranteed —and with competition would come better service and lower rates—by the continued separation of the wire and the wireless companies. That predominant thought was adhered to steadfastly for a considerable time. However, there has grown a substantially changing opinion. The new field of thought asserts that a formal relationship between wire and wireless services would produce efficiency, and that there are a sufficient number of contending groups of wire and wireless companies to assure against a monopoly resulting from individual unifications. My bill retains the anti-merger provisions now existing in the law, but on the question I have still an open mind. I am determined in this matter not to foreclose against any new and impressive fact.

"THE general question has arisen, and I assume it will provoke a controversy, as to the national Government's authority over holding corporations and investment trusts. I believe it is well within the power of the national Government to deal with corporations which take over utility stocks because they are instrumentalities of interstate commerce."

Remarkable Remarks

ALFRED KAUFFMANN
President, Link Belt Co.

"Old customers are the backbone of any business."

GEORGE MATTHEW ADAMS
Writer.

"The big men of the world who are busy doing great things have little time in which to talk."

HENRY FORD
Motor car manufacturer.

"Almost all enduring success comes to people after they are forty. For seldom does mature judgment arrive before then."

PRESTON S. ARKWRIGHT
President, Georgia Power Co.

"While our company desires both the good will of the public and the loyalty of the men, if to secure one means the loss of the other, this company would choose the loyalty of its men."

Report of the National Association of Railroad and Utilities Commissioners.

"Successful business requires men of broad vision and trained minds, whose talents and ambitions should not and cannot be limited by the fortunes of politics or the meager payroll of a Government employee."

HENRY OBERMEYER
Assistant to the Vice-President, Consolidated Gas Company of New York.

"In New York city, gas has already saved the community from having twelve and one-half million more tons of coal and two million tons of ashes hauled through the streets every year."

FLOYD W. PARSONS
Writer and economist.

"Although utility earnings will doubtless continue to show increases year after year, the present excuse for today's price basis of representative public service issues has to do with mergers and consolidations, rather than with past or future earnings."

CARL D. THOMPSON
Secretary, Public Ownership League of America.

"The League has been assisting schools and universities in their debates on public utility problems for years, but there is a special feature of this work to be mentioned this year. We are now beginning to handle these debates in a sort of 'wholesale' manner."

Chairman of the Board of a great corporation.

"In every instance where I have seen a corporation divide its activities and then make the head of each division responsible for results, I have seen business improve."

ED HOWE
Newspaperman and philosopher.

"For many years the Chinese have been struggling to secure railroads. . . . Now that they have a good many, they are engaged in destroying them. The Chinese appreciate the convenience of railroads: the destruction comes about in fighting for their possession."

MELVIN A. TRAYLOR
President, First National Bank of Chicago.

"It is not enough for a president to learn of trouble after it has happened. Almost anyone can read a financial statement and then call someone to the carpet for not having done his duty. That is not management."

HARRISON S. ELLIOTT
Professor of Practical Theology, Union Theological Seminary.

"The machine age attacks disease, makes us comfortable, and places a host of things at our service which we never had before. It places a hundred miracles at our right hand. That is the reason our young people are looking so much more critically at religion than we did twenty-five years ago."

PHILIP CABOT
Professor of Public Utility Management, Harvard University Graduate School of Business Administration.

"A careful and unprejudiced study of cost allocation will convince anyone who makes it that the results of these allocations depend entirely upon the man who makes them. In other words, without any intentional dishonesty, a man can arrive by this method at any conclusion at which he desires to arrive."

SAMUEL CROWTHER
Magazine writer.

"It would seem that a railroad could be managed by rule—and some railroads are—but they are never the roads which earn the most money or stand out in the public eye. The roads which do that are invariably roads of which the public knows the name of the president—showing that the company is actually managed by an individual."

Observation of a lady to her guide through a street railway plant.

"You have made things very clear. You have shown me the new cars and the power house and the trainmen's quarters, and have explained what makes the wheels go round, all of which is very interesting, but I wish you would show me the depreciation, as my husband says that is giving you more trouble than anything else."

SIR ERNEST BENN
Economist.

"The argument, therefore, boils down to this. The economically perfect society wants the maximum of wealth—houses, railways, electricity plants, steamships, machines, and a number of other things. All experience shows that the private individual, through private ownership, is the only agent that can be trusted with these things."

SHALL THE STATES BE PERMITTED

To Export Surplus Power

The people of Maine are facing a weighty economic problem; they must decide whether the export of power will help or hinder the development of their state. And when this question is decided the question must be answered, whether the proposed plan will conflict with the Federal Constitution. The situation presents a problem that is important to electric and gas companies generally.

By ELLSWORTH NICHOLS

To export or not to export surplus power: that is the question which will be decided by the voters of Maine when they go to the polls in September.

The Smith-Carlton Bill, which provides for the export of power, has been passed by the legislature and will go to the people for approval or disapproval. Its approval would mean the abandonment of a 20-year old policy, established by the Fernald Law, of keeping Maine power within the state.

The economic policy involved and perplexing constitutional questions which have been raised are of extreme importance. Both aspects of the proposition are being thoroughly aired in the press and before various organizations.

The Consumers' Protective League has been formed "to conserve Maine resources for Maine development." Mass meetings and other weapons of propaganda are being used by the league to defeat the power export plan now under consideration.

Briefly stated, the new law would permit the export from the state of "surplus power," defined as hydro-electric power which in the case of a public utility company is in excess of the amount of power required to meet the reasonable demands within the territory in Maine in which the company is authorized to serve, and in the case of any other person, firm, or corporation is in excess of the amount required to supply reasonable demands in the available Maine market.

Electric utilities operating within the state would not be allowed to export surplus power themselves, but would be licensed by the Commission, after investigation, to sell power to export corporations organized under the new law.

Many restrictions and safeguards are thrown about the export project to insure control of the corporations which take advantage of the law. These corporations must, for example, enter into contracts binding

themselves to the terms and conditions of the act and the permits or licenses issued under it.

A feature which bids for rural support is a clause requiring the expenditure, for a period of ten years, of one-half of the gross receipts from sales to export companies, for the construction of rural electric facilities, subject to Commission regulation.

As a consideration for the benefits of the law, companies selling power to export corporations must pay into the state coffers an excise tax of 4 per cent of gross operating receipts.

LET us first see what the arguments are both for and against the export proposition from the viewpoint of public policy. We shall then consider the intricate constitutional questions which intrude themselves. We have available expressions of opinion by prominent proponents and opponents of the scheme—including two former governors, each differing from the other.

In behalf of the export plan, the power companies assert that there is now a surplus of power in Maine both developed and undeveloped; that there is not in Maine a sufficient market for this power; and that by permitting the surplus to be exported the power companies will be given a market. The objective of that export is generally conceded to be the more densely populated and the more highly industrialized areas to the south—in Massachusetts, in and around Boston, and presumably also in the manufacturing states of Rhode Island and Connecticut.

In exchange for the privilege of allowing this power generated in Maine to be exported to these other naturally less favored states the companies allege these resulting benefits:

1. That their increased profits will enable them to lower rates for the Maine consumers;

2. That out of the increased profits resulting from this transmission they will pay taxes which will flow into the state treasury;

3. That the construction incidental to new development of dams, power houses, and the like would furnish employment to Maine labor; and

4. That there will be available surplus power to meet the needs of new industries in the state.

THE state of Maine, it has been asserted, has one million horse power now undeveloped and going to waste. If developed, it is contended, more work would be provided for laborers during construction, more taxes to the state after it is built, more opportunities for bringing new industries after it is developed. The argument has been advanced that the state should have a large surplus of year-round developed power ready to offer to anyone who wants to locate a plant in the state. To maintain such a surplus under present conditions would require a large percentage of idle plants, and the interest, taxes, and depreciation, which are the largest part of the cost, would have to be passed along to present users.

Consequently, it is said, the utility companies have not been able to maintain such a surplus. The solution of the problem, it is argued, lies in selling this surplus at any cost sufficient to carry itself until a consumer comes

along seeking to purchase the power.

In a plea in favor of the export bill, Colonel Francis H. Farnum, director of public relations for the Central Maine Power Company, is quoted as saying:

> "You ask why are we interested and I will say for two reasons. First we want to reduce rates because it gives us more growth in consumption, and secondly, in a bad water year we would be hooked up to a steam generating system that could help us out.
>
> "Economic laws are no respecters of state laws. Every hydro-electric system in the country except Maine is hooked up with a steam generating system. They give and take power. As a result power houses are fewer and consumers are served at lower rates. In Maine, being unable to connect to a steam system we must build our own stand-by steam plants and in consequence Maine users are paying to see the Portland, Lewiston, and Farmingdale steam plants stand idle most of the time. . . .
>
> "To sum up: Disinterested people who know most about the advantages of the export of power are most in favor of it. Those who know the least but who are suspicious are opposed. There has been a great change in sentiment in the past few years largely because people are coming to have confidence in the power companies and what they are doing for their territories. We know that our territory, our customers, and the state of Maine are going to profit greatly by the final passage of the Smith-Carlton Bill."

COLONEL Farnum has stated that quite recently the Central Maine Power Company has had to say to two large industries which wanted power within a year that it would take them two to three years to finish a development from which such power would be available, and that the industries went elsewhere.

On the basis of available surplus power in 1928, said Colonel Farnum, the special tax would have netted the state about $86,000 in revenue. This does not include the other taxes which may result from expansion and development of resources.

Former Governor Percival P. Baxter, of Portland, who was at one time a leader among the opponents of the exportation of hydro-electric power from Maine, told the Piscataquis County Federation of Republican Clubs that the export act holds great promise for the development of the state and will cost the state nothing should its promises fail of fruition. Continuing the speaker said:

> "The propaganda given out by the power companies, and I use the word without suggestion of anything improper, has been ably handled. The leading officials of these companies, and their views in their public addresses and newspaper articles repeatedly have promised our citizens that if export be allowed, all the available water powers in Maine will be promptly developed. They again and again have stated that these new developments would annually bring into the State Treasury in the form of taxes as much as 'one million dollars' of new income. They have promised that rates to consumers all over Maine will be substantially reduced, because of the fact that a market will be opened for all the new power that is not needed in Maine and that is to be sent to other states where it will bring good prices. Finally the export group have promised employment to great numbers of workmen in the construction of these new projects. In short, the power people have painted a bright future for the state, and I want them now

Those Who Favor the Exportation of Power Claim—

1. That there is now a surplus of both developed and undeveloped power within the state, for which no market exists;
2. That the greater profits accruing to the power companies by increasing their export business permit a reduction in the domestic rates;
3. That the state treasury will benefit by the increase in taxes on the domestic power companies;
4. That the proposed development of power projects will furnish employment to domestic labor.

to be given the chance to fulfill their promises.

"The approval of the surplus export law will cost the people of Maine nothing either in money or in the lessening of any control they now have over the power resources, and it no longer can be said that the non-export advocates are hindering development and blocking the state's progress. The burden now has been shifted to the power companies, and I want to see them make good their promises and bring progress and prosperity to our state."

OPPONENTS of the export bill take the position that it is the duty of the state to hold the water power resources and develop them for the state rather than to permit power to be sent away to develop other states.

"They talk about surplus power, water running to waste over the falls," said D. J. McGillicuddy at a mass meeting of the Consumers' Protective League. "But remember that when it's running over the falls we still have it in our rivers, but when we send it out of the state on a wire, we haven't got any."

State Lecturer Allison P. Howes, of the Maine state grange, is quoted as saying that one of the reasons for opposing power export is that there are 40,000 farms unserved, and that thousands of Maine citizens and industries are hungry for more and more current at the rate of 5 mills per kilowatt, at which price, it is reported, power would be sold outside the state.

"Let present consumers in town and country have current above present consumption at this low rate," he said. "In other words, let their surplus use get a surplus price. Then let the 40,000 farmers build their own lines."

ATTENTION has been directed to the fact that the consumption of electricity has been doubled in Maine in five years, so that Maine now has the highest per capita development of hydro-electric power of

Those Who Oppose the Exportation of Power Claim—

1. That the exportation of power will tend to attract industries to neighboring states at the expense of Maine;
2. That there are 40,000 unserved farms in the state that are demanding electric power;
3. That the building of domestic power plants will furnish only temporary work to domestic labor;
4. That the attempt of the state to regulate interstate commerce, as well as the imposition of a tax by the state on power to be exported, violates the United States Constitution.

any state. This is taken as an indication that the policy of retaining power within the state under the Fernald Law has not held the state back.

Dr. Ernest W. Gruening, of Portland, speaking before the State League of Women Voters, based his opposition to the export bill upon the argument that exportation would result in loss of industries, would tend to increase light and power rates in Maine because of competition in other states, would entail the risk of being lost to recall forever by Maine people, and finally, because power export would produce no adequate revenue to the state of Maine.

In regard to the revenue phase, Dr. Gruening has stated that the tax would be $\frac{1}{25}$ of a mill per kilowatt hour, and, therefore, if a billion kilowatt hours were shipped out (which he termed a generous if not a fantastic figure) the state of Maine would receive "the magnificent sum annually of $40,000." There would be a difference in these figures if power is sold at 5 mills a kilowatt hour. Taxes on this basis would seem to be $200,000 instead of $40,000.

"The work of building dams," he said, "is purely temporary. It may give employment to a few hundred men for a few months but what of it? That wouldn't amount to a row of pins. As for the permanent employment of the men in the power stations, it is difficult to conceive of an industry which gives employment to fewer men than a power station. It would employ an engineer, a mechanic or two, and a watchman, and that's all. To talk about these power stations giving permanent employment to Maine men is a ghastly joke."

OPPONENTS of the Power Export Bill replied to the argument that the export of power will bring industries to Maine by inquiring if Maine power can be shipped to Massachusetts and to regions which

overcome the disadvantages of Maine's remoteness by being themselves in the centers of population with a market surrounding them and on the main lines of transportation—if these industries can secure Maine power there—why should they come to Maine?

Former Governor Ralph O. Brewster, in an address before the Maine Federation, took up the cudgels against the export measure. He said in part:

> "Maine citizens are naturally disturbed to learn that it is proposed to export electricity at 5 mills or less when the largest company concerned has received a revenue for domestic lighting in recent years as high as 9 cents or 90 mills for each kilowatt hour sold. That is a ratio of eighteen to one. . . .
>
> "Certainly Maine power at 5 mills in Massachusetts will not persuade any industry to move to Maine and pay 10 mills, which is the average rate. Maine industries would look longingly at companies 200 miles farther away buying Maine power at half price. . . .
>
> "Maine labor is interested in Maine payrolls and Maine farmers are interested in enlarged markets here at home since the farmer pays the freight. A prosperous Lewiston and Bangor are of much more consequence to a farmer in Androscoggin and Penobscot than a prosperous Haverhill or Lawrence."

THE argument has been advanced that once the export of power is started, the state will lose control of the power business. To this former Governor Baxter replied:

> "One of the greatest judges in the history of our country a long time ago said that 'the power to tax is the power to destroy.' In the case before us, should it ever become necessary to do so, the power to tax is the power to tax so heavily that export would become unprofitable to the exporting companies. This tax power can be used as a last resort and thus, in an indirect way, the power to recall can effectively be exercised by any legislature of the future. It is of great significance that the power companies have accepted this principle of taxation and have acknowledged their dependence upon the action of future legislatures. This was a great concession on their part; one I never expected them to make. Thus they have met the non-export group half way, and I have no reason to doubt their good faith."

Answering the argument that 40,000 Maine farms should be electrified before power is exported from the state, Colonel Farnum is quoted as saying that if all the farms in Maine were electrified today the Skowhegan plant—not the largest plant of the Central Maine Company—would supply all the power necessary for them.

"So don't get the idea that Maine farms are going to use all the power we have stored up there on the Kennebec," he said.

Disputing the theory that exportation of power will mean turning Maine into a power house for New England, Colonel Farnum cited the fact that none of the Niagara power is transmitted over 150 miles and on the American side little of it goes beyond 50 miles. The average distance power travels from all power houses in the United States is, according to this authority, 22 miles. The idea is to get large industries close beside the power plant and that, he said, was what the power men expected to do in Maine when a large part of Maine's water power sites are developed.

THE principal points of attack upon the new law from a constitutional angle are the general features which may be construed as an attempt by the state to regulate interstate commerce in violation of Article 1, § 8 of the United States Constitution; and, secondly, the imposition of a tax by the state on power that is to be exported, which is attacked on the ground that it is in violation of Article 1, § 10, paragraph 2, of the United States Constitution.

The first section gives Congress the power to regulate commerce among the several states. The second section provides that no state shall, without the consent of Congress, lay any imposts or duties on exports except what may be absolutely necessary for executing its inspection laws.

Through a long line of decisions relating to carriers, the exclusive power of Congress over interstate commerce has been well established. More recently this power has also been upheld in the matter of interstate shipments of natural gas and electricity. The development of this theory is of historical interest.

During the early part of the nineteenth century steamboat navigation in the waters between New York and New Jersey was in its infancy. The state of New York granted exclusive rights to Robert R. Livingstone and to Robert Fulton. Notwithstanding the objection by would-be competitors that these grants were contrary to the Commerce Clause of the Federal Constitution, the grants were sustained in the courts of New York state.

Finally, however, the controversy came into the United States Supreme Court, where Daniel Webster and other eminent attorneys of that day took part in the arguments. Chief Justice Marshall, delivering the opinion of the Supreme Court, upset all of the theories and principles on which the legislatures and courts of New York had been acting for almost forty years. The court then announced the principle that the grant of power to Congress to regulate commerce among the several states "carries with it the whole subject, leaving nothing for the state to act upon." *

"To carry on interstate commerce

* Gibbons *v.* Ogden, 9 Wheat. 1, 187, 6 L. ed. 23.

One of the Knotty Legal Kinks to Be Unravelled:

IT will have to be decided whether the regulation of export power up to the point of sale to an export corporation inside the state line, with full knowledge that the power is on its way into another state, in any way burdens interstate commerce. In this connection the question will probably be raised whether this delivery of power in the "original package" to export companies is in the same category as the delivery by an interstate company to local distributing companies after it passes the state line.

is not a franchise or a privilege granted by the states; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities, as a matter of convenience in carrying on their business, cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject." *

PASSING from the general theory to its application in cases where the export of a commodity used in public utility service is concerned, we find a few decisions which may be helpful in approaching the question whether there is anything in the proposed law which would result in violating the Interstate Commerce clause.

The United States Supreme Court, in referring to a contention that the ruling principle of an Oklahoma statute designed to retain natural gas within the state was the conservation of a needed natural resource, said:

"The results of the contention repel its acceptance. Gas, when reduced to possession, is a commodity; it belongs to the owner of the land, and, when reduced to possession, is his individual property subject to sale by him, and may be a subject of intrastate commerce and interstate commerce. The statute of Oklahoma recognizes it to be a subject of intrastate commerce, but seeks to prohibit it from being the subject of interstate commerce, and this is the purpose of its conservation. In other words, the purpose of its conservation is in a sense commercial—the business welfare of the state, as coal might be, or timber. Both of those products may be limited in amount, and the same consideration of the public welfare which would confine gas to the use of the inhabitants of a state would confine them to the inhabitants of the state. If the states have such power, a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining states their minerals. And why may not the products of the field be brought within the principle? *

AN attempt by the state of West Virginia to favor its own citizens by requiring natural gas companies to accord them a preference was defeated a few years ago in the United States Supreme Court.† The court sustained objections by the states of Pennsylvania and Ohio. It was held that a state wherein natural gas is produced and is a recognized subject of commercial dealings may not require companies to discriminate in favor of its citizens when the requirement necessarily will operate to withdraw a large volume of the gas from an established interstate current whereby it is supplied in other states to consumers there.

"A state law, whether of the state where the gas is produced or that where it is to be sold, which by its necessary operation prevents, obstructs, or burdens such transmission is a regulation of interstate commerce, —a prohibited interference," said the court.

THE leading case dealing with the subject of state regulation of interstate electric transmission was decided by the Supreme Court about

* Crutcher *v.* Kentucky, 141 U. S. 47, 57, 35 L. ed. 649, 11 Sup. Ct. Rep. 851.

* West *v.* Kansas Nat. Gas Co. 221 U. S. 229, 255, 55 L. ed. 716, 31 Sup. Ct. Rep. 564.

† Pennsylvania *v.* West Virginia, 262 U. S. 553, 67 L. ed. 1117, P.U.R.1923D, 23, 37, 43 Sup. Ct. Rep. 658.

What About the Tax on Power?

THE new act is cleverly worded—how cleverly will be determined after its construction by the courts, if it should be approved and become a law.

The law does not impose a tax directly upon all power exported from the state, but evades the necessity of such a direct impost by providing that the company which sells power to an export company shall pay a percentage of its receipts into the state treasury.

The tax, therefore, is laid directly upon a corporation which cannot itself do any interstate business.

The question will probably be raised and decided in the courts whether, in view of the purpose of the entire act to provide for the export of power, the result is legally the same.

two years ago.* The Rhode Island Commission had attempted to regulate rates on current sold by a Rhode Island company to a company distributing electricity to consumers in Massachusetts. There was no attempt here to prevent the sale of electricity outside of the state but there was an attempt to regulate the charge to be made for such energy. The court was of the opinion that the Rhode Island Commission had exceeded its authority.

The point was raised before the West Virginia supreme court of appeals that the Public Service Commission could not regulate the rates for electricity generated in Virginia and carried into West Virginia for distribution.† The court took the position that while such transmission of current was interstate commerce, that alone was not the controlling point.

The principle was announced that as to those forms of interstate commerce which are of national importance and require a general system and uniformity of regulation, the Federal power is exclusive and the states may not act even if Congress has not exerted its paramount legislative authority as to them. But where the subject is of local rather than of national importance, admitting of diversity of treatment according to the special requirements of local conditions, the state may exercise its regulatory authority within reasonable limits until Congress acts. Basing its decision upon this principle, the court ruled that the regulation of the rates for current distributed in West Virginia could be regulated by the Commission of that state.

* Public Utilities Commission *v.* Attleboro Steam & Electric Co. 273 U. S. 83, 71 L. ed. 549, P.U.R.1927B, 348, 47 Sup. Ct. Rep. 294.

† Mill Creek Coal & Coke Co. *v.* Public Service Commission, 84 W. Va. 662, P.U.R. 1920A, 704, 100 S. E. 557.

THE proposed law provides that the current sold to the export corporations shall be delivered at least one-fourth of a mile inside the boundary of the state of Maine, except in cases where the generating plant is nearer to the boundary than one-fourth of a mile. This is obviously for the purpose of avoiding the entanglements of the interstate commerce question, since there is no attempt to regulate the power after it is delivered to the export corporation.

The basis for this procedure is found in the cases which hold that the interposition of independent local distributing companies breaks the chain of interstate commerce.* This is an adaptation of the "original package" theory to public utility service.

The "original package" principle assumes transmission in packages when the packages are broken up for retail distribution as in the case of a keg of beer,† or a package of tobacco.††

It has been pointed out that this is not an "ultimate principle," but is an illustration of a principle. It assumes transmission in packages and then supplies a test of the unity of a transaction. If other forms of transmission are employed there is need of other tests. In the case of the transmission of telegrams, for example, it has been held that a telegram forwarded by the New York stock exchange to a telegraph company in Boston with the intention that the company shall transmit it to selected brokers approved in advance by the exchange does not lose its character as a subject of interstate commerce until it reaches the brokers' offices.*

WITH these decisions in mind it will have to be decided whether the regulation of export power up to the point of sale to an export corporation inside the state line, with full knowledge that the power is on its way into another state, in any way burdens interstate commerce. In this connection the question will probably be raised whether this delivery of power in the "original package" to export companies is in the same category as the delivery by an interstate company to local distributing companies after it passes the state line.

There seems to be a general misapprehension as to the workings of the Fernald Law under which the export of power from the state of Maine has been prohibited for the past twenty years. The question has been raised by some why this law can be upheld in view of the constitutional prohibition against interference with interstate commerce. The answer is that the law does not actually prohibit the export of power.

What the law does is to say that no Maine corporation, unless expressly authorized so to do by special act of the legislature, shall transmit electric current beyond the confines of the state when the current is gener-

* Public Utilities Commission *v.* Landon, 249 U. S. 236, 63 L. ed. 577, P.U.R.1919C, 834, 39 Sup. Ct. Rep. 268.

† Leisy *v.* Hardin, 135 U. S. 100, 34 L. ed. 128, 10 Sup. Ct. Rep. 681; State *v.* Burns, 82 Me. 558, 19 Atl. 913.

†† Rast *v.* Van Deman & L. Co. 240 U. S. 342, 362, 60 L. ed. 679, 688, L.R.A.1917A, 421, 36 Sup. Ct. Rep. 370, Ann. Cas. 1917B, 455.

* Western U. Teleg. Co. *v.* Foster, 247 U. S. 105, 62 L. ed. 1006, P.U.R.1918D, 865, 38 Sup. Ct. Rep. 438, 1 A.L.R. 1278.

ated by any water power in the state. In other words, the state does not interfere with what any individual may do; but it does not exercise its sovereign power to create a corporation to do something to which it objects.

The issuance of corporate charters is a matter entirely within the scope of state powers and is not affected by the Federal Constitution. In the words of former Governor Ralph O. Brewster, the state says in substance:

> "We do not undertake to regulate in any way what you shall do with your electricity but we do not believe that the state is required to issue a franchise or license to you to do something that seems to the state economically undesirable."

WHILE a state may refuse a franchise to a corporation to export power or to do anything else which the state deems undesirable, those attacking the new measure contend that this is a very different matter from providing for the organization of a corporation the purpose of which would be to export power and then undertaking to regulate such exportation, since this would be a direct attempt to interfere with interstate commerce. Again quoting former Governor Brewster:

> "The Fernald Law tells its children not to play in the prohibited yard. The proposed law imposes five hundred lines of conditions under which its children may eat the forbidden fruit. Justice would indeed be blind if it found interstate commerce unburdened by the nondescript creature that Maine puts in business with its sister states."

Under the Fernald Law, it is said, there is no one who can raise a question as to its unconstitutionality because of interference with interstate commerce since any troublesome questions are stopped before they start. No interstate commerce ever commences so far as the prohibitions of that law are concerned and so there is never any interference or any burden. Under the new law there will be interstate transmission of electricity.

WHAT about the tax on power? The new act is cleverly worded —how cleverly will be determined after its construction by the courts, if it should be approved and become a law. You will notice that the law does not impose a tax directly upon all power exported from the state but evades the necessity of such a direct impost by providing that the company which sells power to an export company shall pay a percentage of its receipts into the state treasury. The tax, therefore, is laid directly upon a corporation which cannot itself do any interstate business. The question will probably be raised and decided in the courts, however, whether, in view of the purpose of the entire act to provide for the export of power, the result is legally the same.

IN conclusion it may be stated that the people of Maine are facing a weighty economic problem. They must decide whether the export of power will bring advantages to the state or will hinder the development of their state for the benefit of other states. When this question is decided the question must be answered, whether the proposed plan will operate without conflicting with the national prerogatives granted by the Federal Constitution.

"I can be as lowzy 2 you az i wanta & still hole mi job az a paytron."

"THE *Custommer doant haf to wash its fase or hands or taik a bathe or dres up or be kurtyous 2 travvel & use these publick survunts, but the publick survunts haz got to be cleen & weldrest & polite be4 thay are aloud 2 hawl these smelly things arownd.*"

The Duties of Public Servants

As reported through STRICKLAND GILLILAN

THE uther day wen i was in the pencilvany raleroad stashun at Harrissberg, watin fer a trane —wayin miself on 1 masheen after anuther & no 2 givin me the saim anser & leevin me wunderin wot i did reely way—i gotta thinkin abowt how peepul treets publick survunts.

fer a fu minnits i was ashaimd of bein wunnuv the publick.

it Was groaver cleVeland sed "a publick offis izza publick trust" & he cuddave sed "a Publick survunt izza publick doremat" & a bin ekally troothful.

a Good mottoe for ennybody takin a job with a publick surviss corporashun would be "abandon hope all ye hu enter here."

2 the publick—i am speeking of avridges—a publick survunt must seem moar like a publick surpunt—sumthin 2 be tred on & squushed.

cuRtissy travvels a 1-way rode leeding frum a publick survunt & doant git back exsept by a rowndabowt way if a tall. & if a publick survunt has got the guts—xkews mi frentch—2 rezent a insult, the insultin kustommer razes hell & if he kin he gets the publick survunt kand.

is That nise?

that Day in Harrissberg i was standing bi the inflammashun burro of that stashun watin mi turn in a long cue 2 ask the gurl wot time the 2 thurty trane was skedjuled 2 go & if the clock was rite. the Gurl was ansering the tellyfoan & i hurd wot she waz sayin. she Sez, after shede repeted the infermashun six tymes patient, "i cant maik yu heer lessen yu shet off that raydioe." then she lissend Awile & hung up & sez 2 me wen she sene me gittin a eerfull:

"its gotta be offle Abowt them radioes. peepul Turns them on & then calls inflammashun & asts abowt tranes & leevs the radioe runnin & esspects me 2 maik them heer wot i say. thale Haf to shet off 1 or the uther—the radioe or me."

I see mebby she waz rite even if she wazza public survunt.

the Publick goze atta publick survunt with this idee:

"yuve gotta be polyte or loze yer job aza survunt, but i can be as lowzy 2 yu az i wanta bee & still hole mi job az a paytron. Yah, yah, yah!"

is That nise?

the Custommer doant haf to wash its fase or hans or taik a bathe or dres up or be kurtyous 2 travvel & uze theze publick survunts, but the publick survunts haz got to be cleen & weldrest & polite be4 thay ar aloud 2 hawl these smelly things arownd.

it Aint square shuting.

a Survunt has got the saim rite 2 be durty & sassy that the custommer has got the joak bein that neethur 1 haz enny rite 2 be nasty 2 the uther. i aint speekin of leegle rites but the rites that is Rite.

if the Goldun rool was follerd, thingsd be jaik.

sumhow uther ockupashuns is considdurd respecktabul & onust, givvin as well as gettin, but publick surviss is lookt on as sumpin that jist gets—a hundred pursent gane.

the Ad-VUR-tisin done by publick surviss corporashuns is bribe munny—hevvy shooger. it is hush munny 2 hiar them not 2 tel the trooth abowt the corrupshun them corprashuns does.

munny Spent bi storz & ottomobeel mannafacktrers is jist ad-VUR-tisin, a onust deel. the wurst the groutchiest custommer evver sez abowt that, is that the consoomer paze witch aint so, tho ile haf to argy abowt that smother tyme. but let a Publick surviss corporashun put on a publissity campane & helze poppun.

it syllie!

if Wot the publick seams 2 think is so, peepul otta say:

"i tride 2 raze mi boy rite but heze wurkin fer the gass cumpny! It shure is tuf 2 hav a bluvved child go rong."

or Mebby its a strete ralerode or a steem ralerode cumpny.

Is that sense?

howcum that onust men is awl over the country & that awl the men in corprashuns handin owt publick surviss is krookid? they aint enuff krookid men in this country 2 run ½ the corprashuns as sucksessfull as they are run.

corprashuns Is nessary 2 maik livin cumfortible & desent & handy & we cuddent git along withowt them but we bin, up 2 laitly, treetin them wussen dawgs.

as Peepul gits senabler thattle stop. i cant hardly wate.

a publick Surviss corprashun eaven if it was maid up of krooks cuddent afoard 2 be krookid. it is Wotched closurn a bride & grume in a day coach. besydes, whoo noze, men wurkin fer corporashuns mite be as desent as you & me—mebby desenter'n you.

tamp That doun in yure dunHill & dror on it!

—Rube Razzberry.

Facts Worth Noting

¶ The development of the radio receiver that operates on current taken from the house circuit instead of from batteries, has already built up an annual load of 200,000 horsepower, or as much current as would supply a city of half a million people.

¶ The production of electricity, in the U. S. in 1928 by all agencies which contribute ot the public supply, was approximately 88,000,000,000 kilowatt hours, in addition to which another 1,600,000,000 kilowatt hours was imported from Canada. This total available supply was as much as the production of all the rest of the world.

¶ Six per cent of the income of the average family in the United States is devoted to the purchase of all kinds of service from public utilities. The cost of utility services to the average family is estimated as follows: Steam railroads, 2 per cent; telephone, 1.26 per cent; gas, 1.08 per cent; electricity, 1.03 per cent; street cars, .42 per cent; and water, .21 per cent.

The Downward Trend in Reproduction Cost Values

Some recent factors in the public utility valuation problem that are giving pause to the advocates of the "prudent investment" theory

By FRANCIS X. WELCH

THE other day a good friend of mine called my attention to the fact that, during the period of gradually declining prices of the last few years, certain cases have appeared in which a rate base, previously arrived at by a Commission on the basis of reproduction cost, had been cut down because the price of the labor on materials or both had declined since the date of valuation, all without regard, of course, to the company's actual investment in the property and additions thereto. This was the conclusion of my correspondent, and he asked me if there was any evidence in reported authority of a downward trend in reproduction cost value.

This was a situation which I, myself, had observed in certain cases, but when I looked into the records and conducted a fairly exhaustive examination of cases since 1926, I was somewhat surprised at the amount of undisputable evidence of the downward trend in reproduction cost valuation.

THE question of whether cost or value should be the proper rate base is unquestionably the greatest controversy in public utility valuation. Usually when values fall much below costs, the ratepayer will be found insisting that the profits should be figured on the value rather than the cost, and when values rise above costs, their profits should be based on cost rather than value. The positions of the companies have likewise been reversed. In the leading case of Smyth *v.* Ames, decided in 1898 by the Supreme Court of the United States, the value basis was urged on behalf of the public. In that case it is true that the railroad was asserting the right to earn a return upon its capitalization, but it is probable that the capitalization more nearly represented cost than value, as the road was constructed at a time when costs were high. The late William J. Bryan, appearing against the corporation, argued that railroad companies should be treated like any other business enterprise or any other business man. The company, he declared, should take the risk of possible losses and consequently it should only be allowed to earn a return on the present value of its property.

It is well known, of course, that with the sharp increase of values within the past two or three decades, the reproduction cost of utility property has usually been considerably more than the original investment. It might be safe to say that that is still the prevailing situation. Nevertheless, there is substantial evidence that the cycle has been completed and the pendulum is once more beginning to swing the other way. This is especially true in the case of water utilities where the cost of cast iron pipe has dropped to almost pre-war level. Modern telephone equipment also, it appears, is being produced at cheaper rates than similar equipment in the 1915 to 1920 period.

It is true there are no outstanding cases reported where the reproduction cost of entire utilities have been found to be actually less than the investment cost. This, quite naturally, is due to the war inflation and the sky-rocketing of prices of raw material and labor commencing with 1915. Nevertheless, the distinct downward trend in the price of certain commodities already mentioned has been reflected in the valuation finding of certain utilities. Here, by way of example, are a few of the important cases:

The Pennsylvania Commission, in *Re* Pennsylvania Water Service Company (P.U.R.1927E, 656), said:

> "Furthermore, it must be obvious that high estimates of value made in periods of inflation or of abnormal or peak prices, afford very unstaple bases for security issues. Such securities would be subject to violent fluctuation and depression; not only would the investing public but also the utilities themselves and their ratepayers inevitably suffer from such instability."

Two clear cut examples of the drop in the price of cast iron pipe are shown in the decisions of the Missouri Commission, speaking in the case of University City *v.* West St. Louis Water & Light Co. (P.U.R. 1928D, 322), the Commission said:

> "Water utility properties use a large amount of cast iron pipe, and since the date of appraisal by the engineers, and especially during the last half of the year 1927, the cost of cast iron pipe has decreased to practically pre-war prices. In the case of this company, the reproduction cost is decreased approximately $450,000 due to this cause alone. Cost index figures indicate a gradual decrease in costs during the year 1927, but aside from cast iron pipe, pipe specials, and meters, this decrease is not yet applicable to this property."

Again in *Re* Capital City Water Co. (P.U.R.1928C, 436), the same Commission said:

> "It is common knowledge that the costs of some materials have radically changed since October 15, 1923, and present value cannot be obtained by using the Commission's 1925 value of $607,400 and adding additions to the property, without giving consideration to present prices as applied to the property included in said appraisal, considering accrued depreciation since January 1, 1925, and making such other adjustments to said appraisal as the evidence now available justifies."

The actual reductions on account of this downward trend made by the Commission in the latter case were as follows: $4,500 from the standpipe equipment, $50,000 from the distribution system, and $10,500 from the water meter account.

Ratepayers May Soon Insist Upon a Strict Application of the Reproduction Value Theory

"WITH the sharp increase of values within the past two or three decades, the reproduction cost of utility property has usually been considerably more than the original investment. It might be safe to say that that is still the prevailing situation. Nevertheless, there is substantial evidence that the cycle has been completed and the pendulum is once more beginning to swing the other way. . . . While it is safe to say that reproduction cost value is still in excess of the investment cost, the margin is shrinking in the case of many utilities, and if the downward trend continues we may expect any day to hear (particularly in the case of new utilities constructed at war prices), of ratepayers actually fighting for a strict application of the reproduction value theory for rate-making purposes."

In *Re* Pekin Water Works Company (P.U.R.1928C, 266) an estimate of the reproduction cost of cast iron pipe as of January 1, 1925, by utility engineers was replaced by the estimate of the same commodity as of June, 1927, by the engineers of the Illinois Commission at a reduction of $4 a ton when the former admitted the fairness of the second estimate.

A very clear indication of the sharp drop in prices between January 1, 1927, and January 1, 1928, was shown in the valuation of the Oconto City Water Supply Company by the Wisconsin Commission, not yet reported, and in that case the Commission's engineer testified that the prices of materials had declined greatly from the date of his former valuation, which was January 1, 1927, and referred specifically to a decrease in the price of cast iron pipe of approximately $9 a ton. The Commission found that the effect of this would be a decreased adjustment in the cost of reproduction as of the latter date by $16,619 including an overhead allowance of 15 per cent.

JUST a few weeks ago the Minnesota Commission, in valuing a telephone utility, found an estimated present fair value of the physical properties in the amount of $10,780.14 which was approximately $2,000 less than the petitioner's recorded book cost of the entire property. It is interesting to note that increased rates were denied in that proceeding.*

However, with the exception of a few small telephone valuations, such as the one just mentioned involving minor exchanges, some of them built during the war peak prices, there cannot be said to be any outstanding case where the reproduction cost value of the entire utility was clearly found to be less than the original cost. About the nearest approach to this situation on a large scale was the valuation finding by the Montana Commission in Public Service Com. *v.* Great Northern Utilities Co. (P.U.R. 1929B, 176) where the utility claimed an actual investment in gas property

**Re* Northwestern Bell Teleph. Co. M-1847.

up to October 1, 1927, in excess of $100,000. The Commission's engineer found a present reproduction cost as to depreciation value in the sum of $36,267.06. The Commission finally determined the rate base at $46,091.72.

Of course, these cases deal mostly with the drop in the price of some raw commodity since the war peak. There is also the important factor of labor saving devices. It has been repeatedly held that new improvements in the art of utility construction or operation should be reflected in the present value for rate-making purposes. A Tennessee court once held that a method of computing a utility rate base which will deny to the rate-paying public all benefits of scientific improvements and progress in the development of mechanical art is unreasonable and unsound. (P.U.R.1928D, 722.)

For example, in *Re* Elizabethtown Water Co. (P.U.R.1927E, 39), the New Jersey Commission ruled that the unit price for excavation work on a reservoir should be computed so as to reflect the saving effected by the use of modern labor saving machinery and equipment.

A more recent example is the Oconto City Water case already mentioned. The Wisconsin Commission concluded that, if the property were to be reproduced, reasonable economy would require the use of trenching machines in the laying of mains and a deduction of $16,619 from a former reproduction valuation based on the cost of trenches dug by laborers.

It is important, however (in this connection), to remember the distinction made by the Pennsylvania Commission in Knoxville *v.* South Pittsburgh Water Co. (P.U.R.1928B, 206), to the effect that any saving which would result from the use of less expensive construction under present day conditions should be reflected in the finding of *fair value* rather than in the *reproduction cost* estimate, which latter figure should include only the cost of reproduction of the structure as it actually exists.

In conclusion, we might state that the cases seem to indicate an unmistakable downward trend in the prices of material and labor. And while it is safe to say that reproduction cost value is still in excess of the investment cost, the margin is shrinking in the case of many utilities, and if the downward trend continues we may expect any day to hear (particularly in the case of new utilities constructed at war prices), of ratepayers actually fighting for a strict application of the reproduction value theory for rate-making purposes.

If those who believe utility valuations should be based on prudent investment would pause and consider this sharp downward trend, they might well ponder whether it were wise to wage this battle further in favor of the ratepayer. It is always unsafe to predict, but I would not be surprised, when some of these utilities constructed during the war peak prices ask for rate increases a few years from now, to see the O'Fallon and McCardle decisions upholding present values heading the list of cases filed in the brief of the ratepayers' counsel. This should also be food for thought for the utilities.

What Others Think

A Call to Meet the "Crisis" in the Task of Controlling Public Utilities

Is there a "crisis" in the control of our public utilities? Apparently Dr. William E. Mosher, of Syracuse University, thinks there is, and he and his associates are viewing it with such alarm that they have written a book about it. Among those who contribute their opinions on the subject are William E. Mosher, Editor, Finla G. Crawford, Ralph E. Himstead, Maurice R. Scharff, A. Blair Knapp, Richard L. Schank, and Louis Mitchell.

This book is divided into two parts. In the first part the authors state what they believe a crisis in public control really is and the causes that have brought it about. In the second part possible remedies are discussed.

The book is an excellent presentation of the views of those who believe that a grave menace confronts the country by reason of the development in the electrical industry as a private enterprise under the present policy of regulation. The arguments of those who are now attacking the industry are well outlined. It is a fine example of high-class propaganda; by that I do not mean to insinuate that because it is propaganda it is to be condemned. In a free country people have the right to express their views and to convince others, if they can, that their views are sound.

In the present work the authors find very much that they believe wrong with the electrical industry, with the State Commissions, and with the courts. Their view appears to be that the electrical industry, being engaged in a course that is inimical to the public interest, is being inadequately controlled by the Commissions and the courts; and that this has brought on what they call a crisis which they say requires prompt action. The concluding words of a chapter on "The Crisis," for example, are as follows:

> "It is generally recognized that we are only on the threshold of the electric age. It should also be generally recognized that we are hardly on the threshold of public control. In fact such control as exists is not far from the breakdown stage. With the public indifferent or acquiescent it is easily conceivable that many pressing issues will remain undecided for an indefinite period while others will be handled in a way that runs directly counter to the public interest. Even in case of inaction the obligations of the public may easily mount step by step, as for instance, if the holding companies are suffered to pursue their operations further without let or hindrance. It goes without saying that these obligations, whatever they may be, will have to be met. When confronted with accomplished facts the confiscatory clause of the Constitution prompts the courts to rule in favor of those who have accomplished them.
>
> "In other words, all of the factors of the crisis, as cited above, call for prompt and positive action. With many of them impending events will compel it in one direction or another. With public spirited leadership and a fair degree of participation on the part of an intelligent minority of the people the electrical industry may be brought to a realization of what it indisputably is, namely, a semi-public industry with equal responsibilities to investors and to consumers."

The book contains a chapter on holding companies in which the advantages and disadvantages of that form of control of operating companies are discussed. Among the disadvantages set forth is their "effect on Commission regulation." The author of the chapter says:

> "The effect of the relations between holding companies and operating utility com-

panies upon Commission regulation is obvious. In theory rates are regulated by the Commission to yield a gross revenue equal to operating expenses and depreciation plus a fair return on the fair value of the property. If such regulation is effective the public can be assured, on the one hand, as to the reasonableness of the division of the benefits arising from the advantages of the holding company; and, on the other, of being protected against the abuses which may follow from its disadvantages. But in so far as holding company profits on management fees and other intercompany transactions enter into operating expenses; and in so far as holding company profits on engineering, construction, and financing fees and other intercompany transactions enter into fixed capital accounts and affect judgment as to fair value; so far, effective regulation is impossible without passing upon the reasonableness of these profits. Nor is this possible without complete information as to the contracts under which such profits are made, the detailed character of the services rendered, and the costs assumed and profits earned by the service agency in connection therewith."

In a glance at the future the author says:

"The difficult problems that have arisen out of the relation of the holding companies and the electrical utility industry have attracted many suggestions for their solution, some of which are discussed in this volume The ideal solution would be the development of a new leadership in the industry itself which would reverse the policy of secrecy as to intercompany relations and transactions and restore the industry to its proper place in public confidence and support.

"One of the hopeful features of the present situation is the fact that concentration of control in a few large companies has already advanced so far that the effectiveness of such leadership can hardly be doubted if it should develop.

"Unfortunately there is no indication at the present time of any development in the electric light and power industry along the lines indicated. The official attitude of the industry as expressed by its leaders has been to doubt the existence of abuses, except in rare isolated instances, and to insist that in such instances the company or individual involved shall alone be held responsible and to contend that there is no general condition requiring any change whatever in the present situation. Mr. H. T. Sands, president of the National Electric Light Association, said at the convention of the association at Atlantic City on June 5, 1928:

" 'Each association, each company, each individual must take responsibility for its or his own acts, receiving the credit or the blame that the record brings. Every tub must stand on its own bottom. Blame, if cause be found for any, should be placed where it belongs. The entire industry should not be condemned because of the misdeeds of a few, if any.'

"If such leadership does not develop within the industry it can only be anticipated that the present attacks on the industry will be continued, and that additional restrictions will be imposed by legislation tending toward the development of some one of the other methods of control referred to elsewhere in this volume. In such case it may be anticipated that whatever method of improved control may be attempted, an assured feature of the legislation will be the requirement of complete publicity as to intercorporate relations and transactions in the public utility industry, including publication of separate income statements for all affiliated companies, whether engaged directly in public utility service or not, and the filing in suitable state or national quarters as public records of complete information as to all intercompany contracts and transactions."

OTHER questions discussed in the first part of the book are the "Control of Industry through Public Service Commissions," "The Role of the Courts in Regulation," "Control of Interstate Transmission of Electricity," and "The Attitude of the Public Toward the Industry," including a discussion of propaganda methods.

The various types of control which the authors say might be substituted for present methods of control are:

Control through contracts, a method suggested by the Massachusetts Commission to avoid following Supreme Court rulings in conflict with the Massachusetts theory of regulation; control by public competition; that is to say, by Government competition; control by a league of municipalities, such as the Ontario Hydro-Electric Power System which is highly regarded by the authors; control through a national planning Commission, and control through national ownership.

The authors, among other things, state in their conclusion:

"There can be no doubt but that we stand at the parting of the ways. One road leads to governmental regulation in

the public interest and the other to a minimum of regulation in the interest of controlling stockholders. Such is the crisis."

On the question of public ownership they say:

"It is hardly conceivable at present that public ownership will come to the fore in this country on a national or state-wide basis, even in the restricted way that is now in operation in Ontario where competition with private companies is to be encountered. The municipally owned plants that would form the nucleus of such a scheme are so widely scattered and operating for the most part under such handicaps as to plant and load factor that it would be difficult to get such a plan under way, particularly in view of the widespread acceptance of governmental inefficiency."

"The Ontario system has, however, demonstrated the feasibility of public ownership and operation of this utility on a thoroughly business-like basis and on a state-wide scale. It demonstrates that it is entirely possible for the government to secure the services of competent managers and technicians if it is willing to pay adequate salaries and make appointments on merit. But ample evidence of this fact might readily be supplied from the public service in this and other countries. It is far from axiomatic that government enterprise is necessarily and inevitably inefficient.

"It is not inconceivable that the Ontario experiment may serve as a beacon light to the people of the United States, should a wave of protest ever get under way at the methods of those in control of the industry on this side the Canadian border. The Massachusetts Commission has already gone so far as to set up two alternatives; adoption of the contract method or state ownership. If the public is once aroused, the use of Ontario as a model will not be so remote as it now seems."

FINALLY the authors say that the primary and most urgent need of the electric industry is "public spiritedness among the responsible leaders."

The authors seem convinced that there are a good many things radically wrong with the industry. To remedy these defects the authors give constructive suggestions of rather ambitious proportions. The idea of service contracts between the utilities and the state receives particular endorsement. "It is to be hoped," concludes the authors, "that the Massachusetts Commission may be permitted to experiment with this policy."

To analyze and comment in detail on the views of the authors would be impossible within any space that could be given to the subject in this department. But the last statement as to the need of the industry may be taken as typical of the character of much that appears in this book. In effect the authors say that the responsible leaders of the electric industry are not public spirited. This is a very prevalent form of begging the question met with in propaganda literature.

In the days when men alone had the right to vote, there was once a woman who was very proud of her husband and who liked to brag about him. Around election time she was very fond of saying:

"My husband" (with the emphasis on the "my,") "always votes for the best man."

This good woman did not stop to consider that those husbands who did not vote for the same man her husband did might have thought that they, too, were voting for the best man. In other words, the question at issue in any election might easily be:

Who is the best man? In saying that her husband always voted for the best man, this woman was merely begging the question, although blissfully unaware of that fact.

To say that the responsible leaders of the electric industry "lack public spirit," or to say, as the authors do in effect, that regulation by Commissions as at present administered is in favor of stockholders rather than the public, and that the decisions of the Supreme Court on the rate base question are all wrong, are of about as much force as the declaration of the woman that *her* husband always voted for the best man.

—J. T. C.

ELECTRICAL UTILITIES, THE CRISIS IN PUBLIC CONTROL. By William E. Mosher and others, under the Auspices of School of Citizenship and Public Affairs, Syracuse University, New York. Harpers & Bros. 335 pages. $4.00.

The Impending Battle of the Fuels for the Creation of Power

IN the Washburn-Doan Yellowstone Park Expedition of 1870, Truman C. Evarts became separated from the rest of the party and was lost for thirty-seven days in the wild country comprising the park. He did not worry much the first night, but on the next morning his horse ran away carrying everything Mr. Evarts had with him, except a few articles in his pockets, including a little field glass. Then he realized his great danger.

Two things saved his life. One was the discovery of a kind of thistle which served him as food; the other was his field glass.

It was very cold at night in the high altitude in which he was, at the time of year he was lost, so that snow storms often came on. He could stay sufficiently near a hot spring to keep warm, but he could not reach civilization without starting across the country. If he did that he was afraid he would be overtaken by a storm and perish from cold. Fortunately he happened to think of how fire could be made by focusing the heat of the sun through a magnifying glass. He took out a lense of his field glass and tried this experiment. It worked perfectly. By making fire when the sun shone and carrying burning embers on cloudy days, he just managed to make his way out without freezing to death.

It is only when man is reduced to some such primitive condition as this that he begins to appreciate the importance of the simple but vital things he enjoys, but which he usually takes as a matter of course. Fire is one of these things. Indeed, fire might be said to be the symbol of civilization. Man's ability to make fire and utilize it, if he had achieved nothing else, would have been sufficient to have elevated him above all of the rest of the animal kingdom.

IN "Prometheus, U. S. A." the author, Ernest Greenwood, outlines the story of fire and heat and of the use of fuel down through civilization. Beginning with the legend of Prometheus and other legends about fire, he speculates about how early man might have discovered how to make and utilize this fundamental element and then discusses the various fuels which have served and are at present serving mankind. He sketches the story of wood, coal, gas, and petroleum and deals with what he calls "The Battle of the Fuels." Wood has already passed out of the picture. The author thinks that direct heating from coal will also go the same way. He believes the struggle will be between gas and oil heating with chances in favor of the victory of petroleum. Upon this point, he says:

> "That the next ten years will witness a tremendous battle between various types of fuel for supremacy not only in the industrial world but in the home is generally admitted by the leaders in various fuel-furnishing agencies, though they discuss it with some reluctance. Today it is a three-cornered fight between fuel oil, manufactured gas, and coal. Wood can no longer be considered as fuel except in a few remote and scattered areas where neither coal, gas, nor oil are, for the moment, available except at excessive cost. While there is much talk of electricity for heating and cooking, it must be remembered that the production of electricity depends to a great extent on the burning of some kind of fuel. Water power will never be able to supply but a small proportion of the energy necessary for our light and power needs and for the time being, at least, can hardly be expected to make any notable contribution to energy in the form of heat for cooking or house warming. Electricity generated by steam plants is making and will continue to make a constantly increasing contribution to the supply of heat for these purposes, but here again we must return to the consumption of some kind of fuel as the basis for this form of heat energy.
>
> "In contemplating this impending battle of the fuels—oil, gas, and coal—and its probable outcome, there are many things beyond the relative costs and the relative conveniences at the present time which must be taken into consideration. Reduction of the cost of living, comfort, health, and conven-

ience are, of course, matters of prime importance to the individual; but matters of national economics are also of prime importance, although not so easy to discuss in concrete form. For example, the destruction of one great industry because of the manifest superiority of two or more other industries is a serious matter and always calls for adjustment of labor conditions, capital and national income. Unless the labor, the capital, and the equipment which is employed in that industry can be employed in some other way, the whole industrial fabric is affected and hardship to a very considerable number of people is the inevitable result.

"There is also the matter of the future ability of the industry or industries to take care of a greatly increased business due to the failure or elimination of some competing industry. There is such a thing as too rapid an increase in the demand on any enterprise. Supplying the demand for fuel depends entirely on ability to distribute. The petroleum industry depends on its pipe lines, on the railroads, and on the public highways over which its tank wagons and motor trucks travel. The gas industry depends on its gas mains and on the railroads which bring to it the coal necessary for the manufacture of gas. The coal industry depends on the railroads and on the public highways. Each industry can supply to its present and future customers only the amount of fuel which it can distribute through these agencies. Any sudden and heavy increase in demand for any type of fuel means a sudden and heavy demand on the distributing facilities. This in turn means enormous additional capital requirements which, together with such other readjustments as may be involved, can easily result in an additional cost to the consumer instead of the reduced cost which usually accompanies increased production and sales."

Automatic heat is called the perfect servant. The author concludes as follows:

"Then man began to turn his attention to house heating. With the constant improvement in coal-burning central plants in the cellar it seemed as though little more could be done. But he resented having thrust upon him continually the machinery by means of which he kept warm—the drudgery of the coal furnace made him say once more to himself, 'There must be something' even better, and turned his thoughts to something which would relieve him of it. Experiments in oil-burning devices had been going on for a long time and the gas companies were searching for a type of burner which would enable them to heat the home at a cost which would be within range of the man of moderate means.

"The result has been automatic heat—the perfect servant. The coal-burning furnace is passing and its place is being taken by an oil and gas-burning device controlled automatically by a thermostat. Yet all of this has happened since yesterday and a very short yesterday at that. After tens of thousands of years of struggling with coal and wood fires, man, because of his dissatisfaction, has at last produced a method of utilizing fire which requires absolutely no effort on his part. Drudgery in connection with the use of fire is a thing of the past.

"What of the future? No one knows and no one can predict. No doubt the time is coming, and coming rapidly, when the same unit in the cellar will warm the house automatically in the winter and cool it automatically in the summer. A combination heating and refrigeration plant is quite within the range of possibilities. The gift of Prometheus has in turn given man every comfort he has today, and will continue to give added comforts as long as man is dissatisfied with things as they are and is continually demanding something which is better."

This is a good boost for petroleum. It will give the coal men and the gas men something to think about. If anybody believes that the gas industry is free from competition this idea will be dispelled by reading Mr. Greenwood's new book.

—H. C. S.

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March of Events

Colorado River Project

PRESIDENT Hoover on June 25th signed a proclamation declaring that the states of California, Nevada, New Mexico, Utah, and Wyoming had ratified the Colorado River Compact on a six-state basis within the six months' period required by the Swing-Johnson Bill; that the state of California had met the special requirements of that bill; and that, as all the prescribed conditions have been fulfilled, the Swing-Johnson Bill is effective. Arizona had not ratified the compact.

The compact itself relates entirely to the distribution of water rights between the seven states in the Basin. It has nothing *per se* to do with the Boulder Canyon development except that it removes the barriers to such development. It is the final settlement of disputes that have extended over twenty-five years and which have stopped the development of the river.

President Hoover has pointed out that this compact has a special interest in that it is the most extensive action ever taken by a group of states under the provisions of the Constitution permitting compacts between states. He directed attention to the fact that the only instances hitherto were mostly minor compacts between two states on boundary questions, except the one case of the New York Port Authority, which was of first importance, but was a compact between two states.

Three courses of development are possible: 1. The government may receive bids on the right to use the water at the dam for power purposes and let the highest bidder construct and operate the power plant; 2. The government may build a power plant and lease it to bidders for the power, public or private, on terms which will pay costs of operation, interest, and amortization; 3. The government may build the plant and operate it, wholesaling power at the switchboard.

Cities to Co-operate in Telephone Cases

ALL Pacific Coast cities, including San Francisco and the East Bay towns, that have been combating a proposed increase in telephone rates by the Pacific Telephone & Telegraph Company, have been making plans to co-operate in their opposition to the company. A meeting was called by the Telephone Investigation League of America to be held at Portland this month.

Among the matters to be taken up are the program to be presented before the United States Senate Committee hearing on telephone, telegraph, and radio activities next December, and the relationship between the Pacific Telephone & Telegraph Company, the American Telephone & Telegraph Company, and the related Western Electric Company.

Dion Holm, assistant city attorney of San Francisco, who has been representing the municipality, is quoted as stating:

"Both the Portland conference and the Washington hearing are of tremendous importance to San Francisco. While the present rate case may not be decided by December, the contentions presented by both sides in the controversy will undoubtedly be presented again at the Senate hearing. The meeting in Portland will map the plan of campaign. A dozen cities outside of California are fighting advances in phone rates, so one can realize the wide-spread public interest in the matter. These advances are evidently only an entering wedge for a general advance all over the country, and that is the reason why the Senate investigation is most timely."

California

Superiority of Public Use When City Condemns

THE authority of the city of San Francisco to condemn property of the Pacific Gas & Electric Company has been challenged on the ground that the system is now dedicated to public use to a greater extent than would be possible if the city should take it over. This point is raised in a petition for rehearing on the valuation proceedings before the Commission which were decided on June 17th.

The petition for rehearing also attacks the valuation figure on the grounds that it violates the state and Federal Constitutions by providing for the taking over of property without just compensation. Thirteen separate points, it is reported, are enumerated in the petition, all based on technical grounds.

The Pacific Gas & Electric Company and the Great Western Power Company have resisted the claims of the city in regard to valuation. Both firms, through their officials, have stated that the valuation of their properties within San Francisco is far below a reasonable figure and that they would fight the Commission's decision through the courts.

The valuation proceedings were instituted by the city, which may acquire either or both properties to use as a municipal distribution system for Hetch Hetchy power. The Pacific Gas & Electric valuation was fixed at $26.625,000 by the Commission. This figure is less than half of the company's claim of approximately $60,000,000.

Profits for Parent Telephone Company Attacked

An exhibit filed with the Commission by attorneys John Francis Neylan and Grove J. Fink, representing a group of telephone users who are opposing the company's proposed increase in rates, contains allegations of large profits of the American Telephone & Telegraph Company and the Western Electric Company at the expense of the operating company. The exhibit was prepared by F. Emerson Hoar, consulting engineer for the group.

Mr. Hoar claims that instead of an increase in rates the telephone company should receive a decrease. He asserts that excess profits have been taken from the local company by reason of the direct relationship with the other company.

The Western Electric Company is described by Hoar as a "monopolistic institution whose functioning is noncompetitive to an extreme degree." He asserts that profits from the Pacific Telephone & Telegraph Company in ten years amounted to over a million dollars. He charged that the American Telephone & Telegraph Company had received over three million dollars in excess profits during the last ten years from the local company.

District of Columbia

Monthly Reports from Utilities

The Commission has called on all utility companies in the District for a monthly report for all property changes. Previously the companies were in the habit of reporting each month lump sum expenditures for property changes. Under the order the companies are required to itemize all expenditures and show just what funds such expenditures are charged to.

Several weeks ago the Public Utilities Commission called a conference of executives of all utility corporations in the District and laid down the new policy. The result of the change is to be such as to give the Commission a perpetual inventory of the physical property of each company.

Hearings Open on Petition for Higher Fare

The attempt by the traction companies in Washington to obtain higher fares was renewed before the Commission on July 29th. It was predicted that the hearings might cover a period of a month or six weeks.

There is considerable interest in the proceeding because this is the first case of size and importance handled by the newly appointed Commissioners.

A survey and study of the operations and financial methods of the Capital Traction Company and the Washington Railway & Electric Company has been made and other important data has been collected by Byers M. Bachman and Walter Dunlap, accountant and engineer, respectively, for the Commission.

Opposition to the fare increase is being led by Ralph B. Fleharty, people's counsel, and William McK. Clayton, chairman of the utilities committee of the Federation of Citizens Associations. Robert E. Lynch, assistant corporation counsel, appears as legal adviser to the Commission. President John Hanna, George E. Hamilton, chairman of the board, and attorney G. Thomas Dunlop represent the Capital Traction Company, while president William F. Ham and S. Russell Bowen, vice-president, represent the Washington Railway & Electric Company.

The Washington, Baltimore & Annapolis Electric Railway Company, Mt. Vernon, Alexandria & Washington Railway Company, Washington Interurban Railway Com-

pany, and Washington & Maryland Railway Company have also been made parties to the proceedings.

These proceedings are the result of the failure of the Senate to approve the merger plan of the traction companies. Last year an application for increased fares was rejected pending the disposition of the merger plan by the Senate Committee, and the failure to approve the merger proposal spurred the traction companies to renew the battle for an increase.

Illinois

Final Arguments on Phone Rates

FINAL arguments were made on July 17th in the injunction suit in Federal Court brought by the Illinois Bell Telephone Company to restrain the enforcement of a Commission order fixing lower rates than those now charged.

This litigation involves a possible refund of $15,000,000 to Chicago telephone subscribers and a future saving to them of $1,700,000 a year. The telephone company claims a valuation of $170,000,000 and alleges that at the old rate earnings dwindled from 6.22 per cent in 1923 to 5 per cent in 1927, and that they were 5.15 per cent in 1928. If the Commission's rate order had been enforced, it is claimed, the net earnings would have been 5.80 per cent in 1923, 3.89 per cent in 1927 and 4.10 per cent in 1928.

The city of Chicago is asking that the injunction be dissolved and the rate fixed by the Commission be ordered into effect. The city contends that the earnings of the company should not be taken into consideration as the local company is owned by the American Telephone & Telegraph Company, which makes a profit from the Chicago service in addition to dividends.

Attorneys for the city, in support of their contentions, introduced 25 charts in court showing the diversion of Chicago nickels. They filed a statement of facts containing 340 pages and giving a history of the telephone company business since the first Bell patent was issued in 1876, with annual reports and financial statements.

The valuation claimed by the company is attacked by the city and it is asserted that the actual cost as shown on the books and which represented post war peak prices should govern.

A decision is expected some time in the Fall after briefs are submitted by both sides.

Control of Streets by Municipality

CORPORATION Counsel Ettelson of Chicago has petitioned the state supreme court for a rehearing in the Motor Coach case. He declares that the supreme court decision, if allowed to stand, would take from the city its power over streets. Several weeks ago the court ruled that the city had no right to force a bus company to obtain a franchise for use of the city streets.

"If this opinion is allowed to stand," Mr. Ettelson says in his petition, "the city will not be able to regulate traffic on its streets, which it must of necessity do. As a practical question, the city must have power, by reason of the authority granted to regulate, to refuse its permission in proper cases. This opinion, carried out to the full extent of its meaning, would preclude the city from licensing; in other words, the bus company could refuse to pay a license such as it is now paying to the municipality and the city would be without power to enforce its license provisions by prohibition.

"The error to which the court has fallen is in confusing the power or control over the right of occupancy in use of the streets of a city for the purpose of carrying on a public utility business with the power of regulation of the utility in the conduct of that business."

Telephone Franchise Blocked by Free Service Claim

AN agreement between the city and the Illinois Bell Telephone Company on a new franchise, the Chicago *Daily Tribune* tells us, awaits only the settlement of the city's demand for free telephone service to the city hall, police, and fire departments, and for $55,000 more in compensation than the company will allow. Attempts have been made to iron out these differences.

The company's plan calls for a payment to the city of 3 per cent of its gross revenue instead of its gross receipts as compensation for use of the streets. In addition the company wants to discontinue the free service which it provides under the old ordinance.

Figures submitted to the council subcommittee considering the question showed that

the city received $1,826,442 compensation from the company in 1928 and $2,275,292 from the Commonwealth Edison Company. The People's Gas, Light & Coke Company, however, which digs more holes in the streets than the other two, it is reported, pays nothing into the coffers of the city for the privilege.

Elevated Fare Increase

THE city of Chicago, it is reported, will not offer any evidence to combat the increase in fares obtained by the elevated lines in the proceedings before Master in Chancery Roswell B. Mason. The master has adjourned the case until September 15th, when he will hear arguments on the question whether an increase in fares obtained under an injunction from the Federal Court shall continue.

The city, it is said, takes the position that it is not necessary to present evidence because the elevated lines have not made out a case. This was the explanation of Congressman Frank R. Reid, acting as special assistant corporation counsel for the city.

The elevated lines have been presenting evidence during the past nine months in order to build up its case. Attorneys for the company have attempted to prove their contention that the elevated lines are worth more than $160,000,000 instead of the $60,000,000 which the corporation counsel's office asserts the property is worth.

The case originally was tried before the Illinois Commission, which tribunal denied the increase. The attorneys for the elevated lines then went into Federal Court and obtained a temporary injunction restraining the Commission from preventing an increase in fares. The case was sent to the master in chancery.

Indiana

Electric Utilities Disagree Over Rural Extensions

AT a hearing on a petition by the Wabash Valley Electric Company for authority to serve electricity on a rural line extending from Clay City to Coal City and over a branch extending to Patricksburg, the Evans Electric Company of Indianapolis entered opposition. The petition was opposed on the ground that the Evans Company held a certificate granted by the Commission for the same territory.

It was asserted that although the certificate was held by the Evans Company the Wabash Valley Company, without authority from the Commission, had undertaken the construction of a line in the community in question. Energy was transmitted over the line for the first time early in July while the Evans Company sought to halt operation of the line by proceedings in the Vermilion circuit court.

It was admitted by representatives of the Evans Company, says the Indianapolis *News*, that the company had not gone ahead with the building of its proposed line under the certificate from the Commission, but this was explained by the fact that the Wabash Company was building on the same right of way without authority and the company's attorneys had been busy attempting to stop the Wabash Company by court proceedings and appeals to the Commission.

Louisiana

Street Railway Strike in New Orleans

THE street railway company has been having plenty of trouble in New Orleans by reason of a strike. The car men quit work and service was suspended for a while. There was much rioting and company property was destroyed.

On July 15th cars were run under the protection of an injunction obtained by the New Orleans Public Service in Federal District Court. Armed United States deputy marshals rode in the cars and large squads of other marshals and police rode alongside in automobiles. Very few persons, says the New York *World*, rode in the cars. Jitneys in use since the strike started continued to do a big business.

Union men and their friends started a free jitney service in which it was left to the passengers to donate money or not to the drivers. This practice, it is said, was started to anticipate possible efforts by the Public Service to have city authorities enforce the jitney ordinance, which requires posting of a bond by jitney operators. This is a subterfuge which has been used in other places and has usually been declared illegal.

Maine

Friendly Hearing on Abandonment of Railway

THE prospect of a spirited hearing before the Commission on the petition of the Androscoggin & Kennebec Railway to abandon and salvage its 16-mile branch between Brunswick and Yarmouth, according to the Portland *Press Herald*, faded in reality into a friendly conference, characterized by suggestions rather than protests, in the face of convincing statements of operating loss presented by William B. Skelton, counsel for the railway company, and Alfred Sweeney, general manager, at a hearing on July 23rd.

Figures presented show a gross revenue of $24,150.56 with a deficit of $13,080.06. Automobiles were blamed as the cause for the falling off in patronage and gross revenues.

Mr. Skelton said that if the people wanted to take over the Brunswick and Yarmouth line they might have it as a going proposition; that they would have to pay no more for it than the cost of salvage; and that they would then have an independent road which they might operate as they saw fit, charge whatever fares they deemed reasonable, and pay whatever wages they choose for their labor. Howard Davies, of Yarmouth, suggested that there would be trouble between the towns as to who would manage it.

"We have had trouble enough on the ball field," he said.

The hearing was adjourned with a statement by Chairman Stearns that the Commission would probably report a decision in about thirty days.

Would Organize New Power Company

FOUR petitions were presented to the Maine Commission, on July 19th, with H. J. Stearns presiding as chairman. One was a petition to organize a corporation under the Maine laws to supply electric energy in several cities, including Durham, New Gloucester, and Lewiston. The company, headed by F. W. Winter and nine individuals of Durham, asked the privilege to purchase electricity from the Central Maine Power Company. Mr. Winter has been active in the hydroelectric dispute.

Maryland

Outside Meters at Summer Resort

THE Annapolis & Chesapeake Bay Power Company, which serves many of the resorts in Southern Maryland with electric current, it is reported in the Washington *Times*, has at last solved the problem with which it was confronted by its inability to enter many of the resort houses in the winter months and read the meters. The company has decided to install outdoor meters in place of those now in use.

With the development of dozens of resorts, both large and small, the *Times* continues, the company found itself prevented from reading the meters of virtually all of the cottages during the winter months. This was true despite the fact that in many instances power was being used although the cottages were not in constant use.

Meter readers under the new system will not have any difficulty in ascertaining the state of the meter, whether the owner of a house is at home or away. The ruling affects hundreds of homes and cottages, including places like Sherwood Forest, Epping Forest, and other resorts along the rivers of Southern Maryland and Chesapeake Bay.

Michigan

Gas Rate Cut for Small Consumers

THE Adrian city commission and officials of the Citizen's Gas Fuel Company, says the Detroit *Free Press*, have entered into an agreement whereby a new gas rate becomes effective immediately, to continue until November 1st. This agreement offers a substantial reduction to the small consumers while increasing slightly the bills of the large consumers. It does not materially affect the company's income, but is a readjustment.

After the city has tried the rates, the gas

company, it is said, will ask a special election in October on a franchise with the new scheduled rates effective the first five years. If the voters refuse to grant the franchise, the rate question will be placed before the Commission.

Minnesota

Lack of Funds Delays Phone Inquiry

INVESTIGATION of the telephone rates in St. Paul to determine whether they are excessive, says the Minneapolis *Journal*, will have to wait until the state legislature provides the money to finance the inquiry. Colonel F. W. Matson, State Railroad and Warehouse Commissioner, is quoted as the authority for this information.

An investigation was urged by Commissioner C. J. Laurisch as a result of the recent sale of the Tri-State Telephone & Telegraph Company at a price which was considered by some to be very high. It was said that this might result in a rate increase. Commissioner Matson said:

"We have wanted the state legislature to provide funds which will enable us to make independent inquiries when we think they are justified, to protect the people against unfair or high rates. Such investigations are necessarily expensive affairs. Without money, we cannot go ahead."

Missouri

Spirited Fight Over Kansas City Fares

A HEATED controversy has been going on in Kansas City in regard to the proceedings by the Kansas City Public Service Company to obtain an increase in fares. The Public Service Commission and the courts have both had a hand in the matter.

Newspaper comment has been so extreme that the Commission found it necessary to reply to an editorial in the Kansas City *Star* attacking the Commission. The Commission called statements in this editorial "harmful, scandalous, libelous, and untrue," and pointed out the misconception of the situation in the mind of the editor.

The company filed a 10-cent fare schedule on February 11th. The city was permitted to intervene. A formal order was entered on March 8th suspending the proposed increase, and a Commission order was entered on March 11th providing for the appraisal and audit of the utility.

Then, on March 27th, the street car company asked for a temporary emergency increase, coupling three tickets for 25 cents with a 10-cent fare. On June 10th the street car company filed a motion for immediate hearing on its emergency application and thereafter a restraining order was obtained by the city in the circuit court in Kansas City holding up all proceedings by the Commission.

The language of the injunction was so broad, as pointed out by the Commission, that it even prevented the Commission from further suspending the increased charge, which without a further suspension would be effective on July 12th. The supreme court thereupon authorized the lower court to amend the injunction so as to permit the Commission to suspend the increase further and the Commission entered another suspension order for a period of six months.

In the injunction proceeding the Commission was, of course, a codefendant with the street railway company, and on the other side was the city. Opponents of the Commission seized upon this necessary legal alignment as an excuse for charging the Commission with being in alliance with the utility, and the Commission deemed it necessary to reply to the savage attacks upon its integrity. In a letter to the Kansas City *Star* it said in part:

"It will be a deplorable condition if the time ever comes in the state of Missouri when a Public Service Commission will permit itself to be influenced in any degree by the fear of criticism or the hope of praise. The members of this Commission recognize the fact that they, in common with all other public officials, are justly subject to criticism for wrongdoing, misconduct, inefficiency, or failure to perform their duty. We do not believe, however, that merely because we are public officials we should for that reason be subjected to unjust and unfair criticism when there is no wrongdoing, misconduct, inefficiency, or failure to perform duty.

"We do not own a newspaper, and, therefore, cannot publish to the world anything relative to our actions or our views. We must depend on the public press."

New Hampshire

Future of the Electric Light and Power Business

THE electric light and power business has a great future and will play an ever-increasing important part in home life and in industrial life in America, said Walter S. Wyman, president of the Central Maine Power Company, in an address on July 17th before the New Hampshire League of Women Voters.

The industry can and should give the customer more and more for the dollars which it receives, said Mr. Wyman. He declared that the most important thing in American business today is to have all corporations and all business men strive to give the public as much as possible for every dollar that is paid them rather than trying to squeeze out of the customer all the dollars they can for as little service as possible.

Mr. Wyman briefly related the history of regulation of public utilities from their beginning in Wisconsin in 1907. He explained the basis of regulation and emphasized the fact that all the regulatory laws and court decisions concerned with this matter provided that rates should be just and reasonable, and that the courts had insisted upon limiting the earnings of the companies to a fair return upon the value of the property used and useful in the public utility business.

The speaker also discussed the subject of holding companies, which, he said, own many of the public utilities of the country. He explained that the securities which these holding companies have in the hands of the public have nothing to do with the rates which are paid by the consumers of light and power.

John Bauer, of New York city, director of the American Public Utilities Bureau also spoke on public utility regulation. He differed from Mr. Wyman, however, in regard to the regulation of rates. He said that the trouble with rate regulation is that it is antiquated, and he recommended a definite standard for regulation.

Mr. Wyman was of the opinion that this was impracticable since the basis for regulation should be a fair and equitable rate, and what is fair and equitable to one community would not be to another.

New York

Initial Gas Rate Opposed by Mayor

THE Commission on July 18th fixed the rates of the Brooklyn Borough Gas Company at $1 for the first two hundred cubic feet of gas with a commodity rate of 10 cents a hundred cubic feet thereafter. The new rate is to become effective October 1st. This order substituted these rates for the old rate of $1.30 a thousand cubic feet a month, which was termed by the Commission "unjust, unreasonable, and unduly discriminatory."

Although the gas company has indicated that it would accept the new rate, Mayor Walker has asked the corporation counsel to petition for a rehearing on the ground that this form of rate is illegal because it is in reality a service charge which is forbidden by the state law. The city has strenuously opposed the block form of rate schedule in Commission proceedings.

Judge Ransom, as attorney for the gas company, is quoted as stating that the company will put the new rate in effect with the hope that before a year has expired the reduction may be economically justified, although the company does not believe that the reduction should have been ordered at this time. Judge Ransom expressed the opinion that the decision did not bind or commit the Commission to the precise form or amount as to the rates of other companies, but that the principles of more equitable rate making had been given notable recognition in New York state.

Brooklyn Union Gas Case Adjourned to Fall

THE Brooklyn Union Gas Company's rehearing before the Commission on its request for permission to introduce a new rate schedule was adjourned on July 30th to be resumed on September 4th. It is expected that the city and the associations opposing the utility will be in a position to summarize their case shortly after hearing the remainder of the expert testimony to be given by company witnesses at that time.

The company is trying to obtain a block rate schedule similar to the schedule recently approved for the Brooklyn Borough Gas Company, instead of a flat rate, in order to make an equitable distribution of costs among consumers.

The city, through its rate expert, Dr. John Bauer, contends that the charge sought (95 cents for the first two hundred cubic feet and 9 cents for each additional one hundred feet) would be unfair to the small consumers. The present rate is $1.15 a thousand cubic feet.

At one of the sessions Prohibition, ham, and potato chips were mentioned in their relation to the application of gas rates. F. C. Hamilton, testifying as an expert witness for the gas company, in discussing the increase in the number of gas meters used by restaurants, laundries, and delicatessens, said that the passing of the saloon with its accompanying free lunch was one of the causes. When the old free lunch counter was gone, he said, after the demise of the open saloon, people began going to restaurants more. This, in turn, resulted in less housework in the home. On cross-examination the attorney for the Bushwick Civic Forum and the People's Civic League cross-examined the witness as to the relationship between hams, potato salad, and potato chips sold by delicatessens and the consumption of gas.

Elevated Fare Hearing Postponed

THE Transit Commission on August 1st adjourned without date the hearing on the application of the Interborough Rapid Transit Company for permission to increase the fare on its Manhattan Elevated line.

On behalf of the transit company William L. Ransom, attorney, objected to the adjournment without date on the ground that from the special counsel for the Commission there had come in recent weeks "intimations or indications of various actions or anticipated steps in the nature of orders by this Commission, which would vitally affect this petitioner in relation to its revenue." Mr. Untermeyer objected to this statement and was supported by Commissioner Lockwood.

Chairman William G. Fullen at the opening of the hearing announced that he would limit the argument to the question of jurisdiction. To this Mr. Ransom objected, saying he knew of no reason for such a limitation or diversion of the scope of the hearing from its statutory purpose. Arguments were heard on the question of dismissing the petition on the ground that the Commission lacked jurisdiction.

Ohio

Lower Electric Rates in Columbus

COLUMBUS consumers of electricity furnished by the Columbus Rail-Light Company, says the Columbus *Dispatch*, will be able to save at least a half million dollars annually as a result of a new schedule filed on July 24th with the Commission.

The new schedule cuts the rate for current approximately one cent per kilowatt hour, effective August 1st. Further reductions in rates to consumers of current, as the public realizes the many advantages offered in its use, were predicted by Ben W. Marr, president of the company. Mr. Marr announced:

"This company is interested in Columbus. The Columbus Rail-Light Company is one of the largest taxpayers and employers of labor in the city. We are looking to the future, not just tomorrow, next week, or the year after, but far ahead.

"Instead of having production of electrical energy remain constant, I would like to handle it as I would any other manufacturing business, increase production and distribution of electric energy as volume sales increase. Columbus should be in as favorable a situation so far as electric rates for domestic purposes and commercial use is concerned as any city in Ohio."

Pennsylvania

Consumers Resist Shutoff for Nonpayment

OPPOSITION to the increased rates of the Scranton-Spring Brook Valley Water Company has reached a fever heat in the communities served. The mayor of Pittston has warned the company that riots and violence may result if company employees attempt to turn off water because of the refusal of consumers to pay increased rates.

Municipal officials everywhere seem to support those rebelling against the rates. Police

refuse protection to water company employees, and in one case an employee was arrested when he disobeyed a policeman's warning against turning off the water. He was taken to court and fined for having license plates which were defaced!

As fast as company employees could turn off the water to consumers, these consumers would turn it on again. It was reported that in some cases hot lead was poured on the shut-off valves and in other places concrete was placed over them. One woman, it is said, sat on the valve until company employees went away.

City officials refuse permits to excavate in order to shut off water and this has forced the company to file several injunction suits against the municipalities. Suits have also been filed by the company against several municipalities and individuals in assumpsit to recover the indebtedness for water service.

Further hearings in the proceedings before the Public Service Commission on the application for permanently higher rates will be held on September 10th. At that time there will be cross-examination of engineers for the communities resisting the increase. Apparently these hearings will not be the last as there is considerable material still to be introduced before the Commission.

Tennessee

Nashville Council Wants Lower Gas Rate

A committee of the Nashville City Council was named on July 16th to undertake the securing of a lower gas rate for the city.

The gas price reduction, says the Nashville *Tennessean,* was proposed in a resolution introduced by Councilman Elkin Garfinkle. It recites that as Chancellor R. B. C. Howell, of the local chancery court, has held that the 5-per cent annual charge upon the gross receipts of the Nashville Gas & Heating Company is illegal and void, and can no longer be collected by the city, the time is ripe for taking steps to secure a reduction in the price charged for gas.

The utility company, says the Nashville *Banner,* was willing to make new rates which would cut the cost of fuel to their customers by 10 to 40 per cent if the city will make no further efforts to obtain the 5-per cent charge. This is a sum which, it is stated, would aggregate more than the 5-per cent charge which the city has sought to collect.

Washington

Protest Against Power Development

THE Federal Power Commission has been asked to grant a license for a power development dam on the upper Columbia river below Wenatchee. A protest has been made by Senator Jones of Washington, it is stated in the *Morning Oregonian.* He has requested that no action be taken with regard to hydroelectric projects on the Columbia until the survey being made by the War Department is completed.

The Secretary of War, the article in the *Oregonian* continues, has notified the Senator on behalf of the Commission that it cannot issue a blanket order against the granting of permission for any Columbia river project, but that all interested parties will be given opportunity to be heard before any license for development or construction is granted.

The project at Rock Island includes two dams, one to the Oregon side and the other to the Washington side of the river. The company making the application is said to be a subsidiary of the Puget Sound Power & Light Company.

West Virginia

City Plans Opposition to Gas Rate

THE Parkersburg city council on July 23rd adopted a resolution authorizing the mayor to take whatever action is necessary to protect the city's interest in the pending gas rate matter before the Public Service Commission. A substitute resolution placing the responsibility on the members of the council was voted down.

This resolution followed the application of the Hope Natural Gas Company for authority to increase rates in the city of Parkersburg and vicinity. The mayor pointed out that the gas rate matter was a big factor in the past city election and that an increase in gas rates would mean thousands of dollars to domestic consumers.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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v.

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v.

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v.

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Valuation — Cost of paving over conduits — Telephones.

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Valuation — Working capital and supplies — Telephones.

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Valuation — Going value — Telephones.

3. An allowance of $215,000 was made for going concern value of a telephone utility having a total rate base of $2,400,000, p. 163.

Return — Operating expenses — Municipal improvements — Amortizement.

4. A telephone utility having a total rate base of $2,400,000 was allowed to amortize at the rate of $4,800 annually a plant loss amounting to $21,428 caused by the abandonment of underground structures necessitated by municipal improvements, p. 164.

Return — Percentage allowed — Telephone utility.

5. A claimed allowance of 7.42 per cent return on the reproduction cost new less depreciation value of a telephone plant was held to be excessive and an allowance of 7 per cent return on the fair value of the plant was permitted for rate-making purposes, p. 165.

[May 7, 1929.]

COMPLAINT of a city against telephone rates; rates reduced.

By the **Commission:** These proceedings arise by complaint entered against the rates of the Johnstown Telephone Company, respondent, by Louis Franke, as mayor of Johnstown, and other complainants. All complaints allege in substance that respondent's rates are unjust and unreasonable.

Effective April 1, 1927, respondent filed with the Commission supplement No. 5 to its tariff P. S. C. Pa. No. 7, making increases in rates for service in the Johnstown exchange area. Prior to the effective date thereof Complaint No. 7215 was entered. Respondent thereupon filed a new tariff, supplement No. 6 to P. S. C. Pa. No. 7, effective May 1, 1927, making further increases in rates for the Johnstown exchange area. Against this supplement, and prior to its effective date, Complaints numbered 7240, 7251, and 7254 were entered. The burden of proof rests on respondent.

Respondent is a Pennsylvania corporation, incorporated in March, 1895. It furnishes service to some sixteen thousand telephone stations in the city of Johnstown and vicinity. Its territory, comprising the southern half of Cambria county and nearly the whole of Somerset county, is of a mountainous nature.

An inventory and appraisal, as of August 1, 1927, of respondent's property, made by the engineers of respondent, was offered in evidence. Complainants' estimate is based on respondent's inventory, which included physical property, working capital, and cost of financing. The appraisal of respondent resulted in a reproduction cost new estimate of $2,780,035, and less depreciation of $2,403,115. The complainants' appraisal was, reproduction cost new $2,207,164, and less depreciation $1,719,507.

[1] From the evidence before it, the Commission is constrained to accept respondent's estimates on all of the physical property, not including construction overheads, except on the item of exchange underground conduit. For this item respondent estimated $289,554 cost new and $238,375 less depreciation. It appears that this estimate was based on the cost to reproduce the existing paving over these underground structures, rather than the kind of paving that was in place at the time the conduit

was placed. The Commission finds that the proper amounts for this item are $236,380 cost new, and $187,302 depreciated. Making this correction, and also allowing an additional amount of $1,535 for right of way which respondent incorrectly included in certain revised conduit estimates, yields the amounts of $2,002,225 cost new, and $1,673,405 less depreciation of the physical property, not including construction overheads.

After a careful consideration of the evidence on construction overheads and cost of financing, the Commission is not persuaded that respondent's property could be reproduced on the expenditures complainants estimate. Respondent's estimates appear conservative, and will be allowed with slight decreases.

[2, 3] For materials and supplies and cash working capital, respondent estimates $135,008 new, and $132,007 depreciated; the depreciation applying to materials and supplies only. Complainants' amount is $45,000 without considering depreciation. It can hardly be successfully contended that a company of respondent's size can be efficiently operated on an amount such as complainants estimate. The Commission will allow $60,000 for cash working capital, and for materials and supplies new and depreciated $60,008 and $57,007, respectively.

The going concern value of a public utility, if it exists, is a value inherent in the company, and must be determined by the Commission from the facts and circumstances of each particular case. Respondent's plant is established, doing business, and earning money. It is evident that it has a going concern value. Its rates are on a parity with other companies rendering a lesser scope of service. The business is developed with 16,000 patrons in a territory which includes the chief commercial center of an important industrial county. From a consideration of all of these elements, the Commission finds that respondent's plant has a going concern value of $215,000.

Totalling all of the allowances determined above, the Commission finds that the reproduction cost new, including going concern value, of respondent's property is $2,784,205, and less depreciation is $2,400,145.

Although considerable evidence was offered by complainants on the book cost of respondent's plant, the Commission, after

careful study, is not convinced that the estimates reflect the actual book costs.

Evidence offered by respondent on the service value of its facilities will be given no weight in the finding of fair value hereinafter made, because the Commission is not persuaded that such an estimate is an element properly evidential of fair value in this case.

Taking the record and all of the facts and circumstances of this case into consideration, the Commission finds and determines that the present fair value of respondent's property is $2,400,000.

For all annual operating expenses, other than depreciation, respondent estimates the amount of $338,411, and complainants the amount of $287,443. The substantial differences lie within extraordinary and ordinary maintenance expenses, general expenses, the amortization of rate case expenses, and the amortization of certain Iron street plant losses.

For extraordinary maintenance resulting from damage to respondent's aerial plant by winter storms, respondent estimates $16,191 and complainants nothing. A study of this evidence discloses that respondent's estimate is not well supported, and is, in fact, considerably negatived by other evidence it placed on record. The Commission will allow $6,765 per annum.

For ordinary maintenance and general expenses, complainants' estimates were based on averages of past performance, while respondent's estimates are those of the most recent available data. The Commission accepts respondent's amounts.

[4] Municipal improvements have necessitated respondent's abandonment of its underground structures on Iron street, which respondent estimates at a plant loss of $21,428 and desires to amortize in three and six tenths years at $6,000 per annum. From the evidence the Commission finds that the loss to be incurred is $17,236, and will permit this amount to be amortized at $4,800 per annum.

In the presentation of this rate case, respondent has claimed an expenditure of upwards of $15,000 which it desires to amortize at $5,000 per annum. In arriving at the estimate of allowable annual operating expenses, the Commission, under the circum-

stances of this case, will not include any cost incurred in this litigation.

Accepting respondent's estimates where the parties are in substantial agreement, and substituting the findings above made for the items in dispute, the Commission finds the fair annual operating expenses, exclusive of annual depreciation, to be $320,615.

For annual depreciation, respondent estimates $96,217, and complainants $92,991. The Commission, in finding the amount of $92,654 to be fair and proper, has accepted respondent's life and age factors, but has made a deduction for the findings on paving over underground conduit, hereinbefore stated.

[5] Respondent argues for an allowance of 7.42 per cent on the reproduction cost new less depreciation of its plant. A finding of fair value, on which a fair return is allowed, contemplates not only this factor but also all of those other elements defined in the Public Service Company Law and the decisions of the courts. The Commission heretofore has uniformly held that a fair return of 7 per cent on a fair value so found is just and reasonable, and from a study of this record it sees no reason to deviate in this case from its long established policy. Accordingly, a 7 per cent rate of return will be allowed upon the fair value found, which is the amount of $168,000 per annum. Adding to this sum the allowed operating costs of $320,615 and the annual depreciation allowance of $92,654, there is deduced a total allowable revenue of $581,269, which is approximately $31,800 less than the estimated revenue of $613,042 to be derived from the rates complained against. The Commission, therefore, finds that these rates are unjust and unreasonable, and an order will issue directing respondent to file a new tariff which will effect a reduction of $31,800 in revenues. In view of the fact that the greatest increases in the rates have been in those for business uses, the Commission further suggests that the above reduction be made in these rates.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

JOHN TRIER

v.

EASTERN NEW JERSEY POWER COMPANY.

Discrimination — Connection charge — Seasonal and permanent customers.

1. An electric company may segregate seasonal customers from those taking service throughout the year and impose a proper charge on the former for the connection and disconnection of service, p. 167.

Payment — Pro-rated monthly charge — Service discontinuance.

2. A minimum monthly charge for electricity should be prorated where service has been disconnected before the termination of a full month, p. 168.

[May 9, 1929.]

COMPLAINT by an electric consumer against an electric company; complaint dismissed with some adjustments.

Appearances: John Trier, for the complainant; William E. Foster, for the respondent.

By the **Board:** This matter came on to be heard by reason of complaint filed by Mr. Trier objecting to a charge of $3 billed him for disconnection of electrical service to his summer residence at 205 Ocean Park avenue, Bradley Beach.

The company's rule covering this charge, as set forth in its schedule under the caption of "Service Charge," reads as follows:

"When current is supplied for a period of six months or less, a charge of $3 shall be made when the connection or disconnection of wires or meter is necessary."

The complainant was of the opinion that his service had been connected on May 18, 1928, and not disconnected until at least six months had elapsed, thus making the rule in question not applicable to his service.

The testimony taken indicates that his service was connected on May 18, 1928, that notice to disconnect same was received on November 1st, that the company's man sought to secure the keys to complainant's residence on November 2nd, but failing to obtain them disconnected the service wires outside the residence on November 2nd, and after many visits to the complainant's plum-

ber, finally secured the keys from him and disconnected the meter inside the residence on November 8th.

Under the reading of the rule, the charge has been correctly billed to the complainant.

As to the reasonableness of the rule the following considerations are pertinent.

As shown in a memorandum on "Minimum Charge for Electric Current" issued by the Board in 1912, costs of supplying service readily fall into three general classes, two of which are fixed and one variable. These are:

1. Customer charges varying roughly with the number of customers served.

2. The second element of cost of service will depend upon the proportion of plant and distribution system which the company must maintain or hold in reserve for each customer. To the company these costs accrue on an annual basis.

3. The third element of cost depends upon and varies with the actual amount (in this kind of company) of electricity used by the customer.

All year round customers generally bear their due costs for all three classes; seasonal customers frequently do not, notwithstanding the fact that they entail larger costs, for instance, in more frequent connection and disconnection of service, which costs money, sometimes an amount not covered by the charge.

[1] Customers taking service continuously for several years do not impose a recurring cost for connecting and disconnecting their service; seasonal customers do. Hence it is reasonable that the electric utility should segregate such customers and impose a proper charge for connection and disconnection of service on the customers entailing such seasonal costs. The record indicates that in this case the service man had to make several visits before he could obtain a reading of the meter inside the house, although the actual disconnection had already been made on the outside. This charge, in territory having a large proportion of seasonal customers, should be imposed upon making the connection of service thus avoiding confusion and dispute at the termination of service for the season, be it four months or eight months. The Company's rule should be amended to cover a season and not a

definite number of months; this was recommended in the inspector's report in this matter.

[2] The record indicates that the company does not follow correct principles in rendering a final minimum bill. Service was begun by the complainant on May 18th and the first bill rendered as of June 11th. The $1 monthly minimum charge was prorated and a bill of 80 cents rendered. Four months elapsed between June 8th, when the first prorated minimum bill was rendered, and October 11th following: From October 11th to November 2nd (when the outside service wire was cut so that current could not be used even if desired) just seven-tenths of a month elapsed and the prorated minimum bill of 70 cents became due and not $1 for a whole month's service.

The Board, therefore, finds and determines:

1. That the complaint, so far as related to the $3 charge for disconnection of service, should be and is hereby dismissed.

2. That the minimum bill rendered as of November 8, 1928, in the amount of $1 should be corrected and rendered in the amount of 70 cents as of November 2, 1928. The final bill for the balance due from the complainant should be rendered in the amount of $4.70.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

CITY OF McKEESPORT

v.

PITTSBURGH RAILWAYS COMPANY.

[Complaint Docket No. 7888.]

Commissions — Managerial policy — One-man street cars.

1. The Commission should not interfere with the managerial policy of a street railway company in installing one-man type cars to reduce operating expenses and to meet economic competition unless the action increases the danger to the public and impairs the reasonable safety of the service, p. 170.

Service — Commission duty — One-man street car operation.

2. It is the Commission's duty to insist that street railway operations be made reasonably safe for passengers and the general public, but it cannot require such operations to be such as to insure against

every possibility no matter how remote, and an objection to the operation of one-man street cars based upon the possible fainting or death of the operator was accordingly dismissed, p. 170.

[April 23, 1929.]

COMPLAINT by a city against the operation of one-man street cars; dismissed.

By the **Commission:** This complaint of the city of McKeesport is made against the Pittsburgh Railways Company on account of its operation of street cars with a crew of one man in certain parts of said city. The allegation is that such operation due to grades, curves, and other conditions existing in the city, is dangerous to the safety of the public.

Evans avenue, on which the operation here involved occurs, extends southwardly from Fifth avenue on substantial grades. From Fifth avenue the grade ascends at approximately 3.17 per cent for 250 feet, then at an 8 per cent grade for 200 feet, in the next 150 feet it rises 8 feet 8 inches, and from this point a grade of 9.4 per cent obtains for a distance of 2,100 feet. The remaining grades are moderate and do not seriously affect operations. At a point where the grade is in excess of 9 per cent there is a 45-degree turn in the course of Evans avenue, the point being about 90 feet north of the entrance to a hospital where there is considerable traffic. Fifth avenue, which is the northern terminus of Evans avenue, is a much traveled street upon which traffic is congested at certain hours of the day. Evans avenue is also intersected by Versailles street, upon which the West Penn Railways Company operates a line of cars.

The cars used by respondent on this line were put in service in 1915, but were completely rebuilt prior to being placed in service on Evans avenue and were equipped with the latest safety devices. The equipment includes the one-man handle sometimes referred to as "Dead Man's Control," which, if released without the air brakes being applied, automatically sets the emergency brakes and brings the car to a stop. The cars have devices for automatically sanding the tracks and the air valves on the doors are so balanced that they may be easily opened by hand. The electric equipment includes new type controllers, switches, etc., including

a pneumatic knock-out, which automatically disrupts the power circuit at the controller. The cars also contain other devices to promote safety in operation, and are equipped with all the devices accepted by the street railway industry as standard for such type of cars. The cars are inspected at regular intervals, and the personnel is given instruction before being placed in charge. There have been no accidents since this type of car has been in operation on Evans avenue.

[1, 2] The complainant has stressed the possibility of the operator of a one-man car suddenly fainting or dying while the car is on a steep grade and falling with his weight on the one-man handle, thereby preventing its release and the setting of the emergency brakes. Such an occurrence is a possibility but an extremely remote probability. It is probably no greater than that of sudden death or incapacity of the motorman on a car operated by two men on similar grades, which might result in a serious accident before the second man could assume charge of the operation of the car.

From respondent's undisputed testimony, it appears one-man cars are being successfully operated in Kansas City, Missouri, Rochester, New York, Albany, New York, Akron, Ohio, Steubenville, Ohio, and Johnstown, Scranton, and New Castle, Pennsylvania, on streets where the minimum grades range from 6 per cent in Johnstown to 12½ per cent in Kansas City and Scranton. The experience of respondent company, as well as the railway companies in other cities, as shown by the evidence, indicates that one-man cars can be as safely operated, under the circumstances here presented, as cars with a crew of two men.

The purpose of installing the one-man type of car is to reduce operating expenses and meet the competition which respondent company has had to confront from privately owned automobiles and other types of transportation. With this managerial policy, the Commission should not interfere unless it increases the danger to the public. The Commission is of opinion that it is its duty to insist that street railway operation be made reasonably safe for passengers and the general public, but that it cannot require that such operation be such as to insure against every possibility, no matter how remote.

On the record in this case we are unable to find that the operation of the one-man type of car is more dangerous to the public than the operation of cars with a crew of two men. The complaint is, therefore, dismissed and an appropriate order will issue.

NEW YORK DEPARTMENT OF PUBLIC SERVICE.
STATE DIVISION, PUBLIC SERVICE COMMISSION.

RE BROOKLYN UNION GAS COMPANY.

[Case No. 4832.]

Rates — Gas — Promotional adjustment.

A proposed general adjustment of gas rate schedules to equalize more approximately the burden of distribution costs among domestic consumers and to promote consumption of service was rejected by the Commission because of the lack of proof as to the reasonableness thereof.

Rates — Duty of the Commission — Gas schedule.

Statement in the dissenting opinion that it is the duty of the Commission to consider and interpret a proposed gas schedule in order to ascertain if it produces a result which is fair to both domestic and wholesale consumers of gas, p. 175.

Discrimination — Analysis of rate structure.

Statement in the dissenting opinion that in the analysis of any rate structure, the bill which the consumer receives is the vital thing to be considered in order to ascertain if it equitably allocates costs between classes of consumers and if it is discriminatory, whether it is unduly so and, therefore, unjust under the statute, p. 177.

Discrimination — Noncompensatory rate.

Statement in the dissenting opinion that a flat rate schedule for gas service in which nearly 70 per cent of its domestic consumers' accounts are noncompensatory is necessarily unsound and unfair, p. 178.

Rates — Service charge — Power of the Commission — Gas.

Statement in the dissenting opinion that a Commission may not hold that a legislature, in enacting a statute prohibiting "service charge," has forbidden both a service charge and a minimum charge where the effect of such decision would perpetuate a straight commodity rate not only inequitable as a matter of economic fact but even so decided by both the Commission and the court of appeals, p. 179.

Discrimination — Lack of a service charge — Gas.

Statement in the dissenting opinion that unless the consumer is required to pay his fair share of consumer costs, that is, the cost due to his own initiative, as distinguished from commodity cost, such costs must be paid by the other users of the service, from which it follows

that a continuation of the flat rate basis of charges means a tendency to an increased cost to consumer and a restriction on any decrease of cost to large users, p. 180.

Rates — Composition of schedule — Elimination of flat rate.

Statement in the dissenting opinion that the problem of a utility in eliminating a wasteful and discriminatory flat rate schedule is to devise a rate structure that will automatically make all accounts compensatory without introducing graver inequalities than those attempted to be relieved, giving due consideration to such factors as the elimination of wastes due to seasonal variation of load, equalization of load, and compensation of account, p. 183.

Apportionment — Customer cost — Gas utility.

Statement in the dissenting opinion that there exists a line of demarcation between costs due directly to consumer initiative and those due to company initiative or, in other words, to the company's pursuit of additional business, p. 183.

Rates — Rate structure — Analysis.

Statement in the dissenting opinion that the starting point of any analysis of rates is the cost of the service, including a reasonable return on the fair value of the property used in rendering the service, and the matter to which cost is a factor must not be confused with other things which have to do with public policy, p. 184.

Apportionment — Consumer cost — Rate schedule.

Statement in the dissenting opinion that certain costs which seem to require allocation to the consumer in a rate schedule were bookkeeping, reading of meters, billing, and other expenses incidental to collection and return, taxes and insurance on commercial premises, p. 184.

Apportionment — Company cost — Rate schedules.

Certain costs were said to require allocation to the company such as the making and delivery of gas to consumers' premises which should be exactly apportioned on the amount of gas used and if required be modified by the load factor and further, if equitable and required, by the value of the service principle, p. 184.

Apportionment — Wholesale rate — Off peak rate.

Statement in the dissenting opinion that wholesale rates for business purposes during off peak periods may be devised to cover the direct cost of manufacture and delivery, including maintenance and, in addition thereto, if equitable and required, an amount based on the value of the service, p. 185.

Rates — Service charge — Gas schedule.

Statement in the dissenting opinion that it is impossible to deal with the initial charge understandingly except as an integral part of the rate structure as a whole with due consideration for difference in load and the demands of wholesale users, p. 203.

Rates — Flat rates — When justified.

Statement in the dissenting opinion that flat rates in order to

be justified must be shown by analysis to be compensatory for virtually all consumers when viewed over a year, p. 204.

Service — What constitutes — Gas utility.

Statement in the dissenting opinion that the receiving and filing of a service application, the unlocking and reading of the meter, and other necessary routine in connection with a customer's account, constitutes a rendition of "service" by a utility notwithstanding the fact that no gas has been consumed, p. 204.

Apportionment — Allocation of consumer costs.

Statement in dissenting opinion that the allocation of consumer costs should be founded on factual data necessarily varying with the situation of the utility concerned but cannot be based on arbitrary formulæ except in so far as a formula may prescribe the character of the allocated charges and the method of using such allocation, p. 205.

Apportionment — Consumer and wholesale rates.

Statement in the dissenting opinion that it should be possible to disentangle the cost elements entering into domestic gas rates as distinct from those that enter into the wholesale rate, p. 206.

Rates — Reasonableness — Compensatory obligation.

Statement in the dissenting opinion that the application for service carries with it an implied obligation to keep the account at least compensatory and a rate structure should be such that this will automatically follow, p. 206.

(PRENDERGAST, Chairman, and VAN NAMEE, Commissioner, dissent.)

[February 14, 1929.]

APPLICATION of a gas utility for a revision of rate structure; denied.

Appearances: Messrs. Cullen & Dykman, by J. A. Dykman, Brooklyn, for the Brooklyn Union Gas Company; George P. Nicholson, Corporation Counsel, city of New York, by Judson Hyatt, Assistant Corporation Counsel, New York city; Maurice Hotchner, New York city, for thirty-eight consumers; Peoples Civic League, by John F. Hylan, New York City; Peoples Community League, by Cornelius M. Sheehan, Brooklyn; Ridgewood Tax Payers' and Business Men's Association, by Jacob Brenner, New York city, and Robert J. Schneider, President, Brooklyn; Jackson Heights Tax Payers' Association, New York city, by J. H. Boulward; Brooklyn Chamber of Commerce, Brooklyn; Public Forum of Brooklyn Heights, by W. J. Dilthey, Brooklyn; Phœnix Civic Association, Richmond Hill South, by W. P. Coster, Stuyvesant Community Center of Brooklyn, by John

Wirth; Forest Hills Community Association, by Herman Otto Klug; Tax Payers' Civic Welfare League of the Eastern District of Brooklyn, by N. H. Schliffer; East End Community League, by A. W. Harrigan, Brooklyn; H. A. Huston, Kew Gardens; The Greater Ridgewood Civic Association, Borough of Queens, P. S. 93, Brooklyn, by Joseph M. Franz, Richmond Hill; Merchants & Manufacturers Association of Bush Terminal, by William S. Ponton, Executive Secretary, Brooklyn; Michael R. Iorio, Long Island City; West Bridge Tax Payers' Association, Richmond Hill; Twenty-eighth Ward Tax Payers' Protective Association, Inc., Brooklyn; Cedar Manor Board of Trade, Inc., Brooklyn, by J. J. Lemrow, secretary; St. Albans Improvement Association, St. Albans, Queens, by F. E. McGowan, secretary; Mr. Tessida Schwinges, Brooklyn.

By the **Commission**: The Brooklyn Union Gas Company having filed with this Commission a schedule of rates for gas to become effective May 16, 1928, and said schedule having been suspended, and public hearings, after due notice, having been held by the Commission at its office in the city of New York, those hereinbefore named having appeared;

And the evidence and exhibits presented upon said hearings having been considered, and the Commission being of the opinion that the proof presented in the proceedings was not sufficient to justify said rate schedules and that said rate schedules should be disapproved and rejected,

Now, therefore, it is

Ordered: That the tariff schedules for gas proposed as effective May 16, 1928, by Brooklyn Union Gas Company be and they hereby are disapproved and rejected.

Prendergast, Chairman, and Van Namee, Commissioner, dissenting:

General Statement.

The Brooklyn Union Gas Company filed with the Public Service Commission a new rate schedule, to become effective May 16, 1928. The rates were suspended and public hearings were entered upon. The schedules briefly stated are:

General service rate: First 200 cubic feet of gas or less per meter per month, 95 cents, all over 200 cubic feet of gas per meter per month, 9 cents per 100 cu. ft.

Wholesale service rate (optional with customer) available for any use of gas by any consumer of gas service other than the City of New York, agreeing in advance to use and/or pay for not less than 100,000 cubic feet of gas in each of three or more consecutive months in each year, beginning with the date of the commencement of service, including the year in which service thereunder is terminated.

(1) For each 100 cubic feet of maximum 24-hour use of gas at any time within the months of December to March, both inclusive 50 cents per month for each month in the year, for each 100 cubic feet of such maximum use or demand.

(2) In addition to 7 cents per 100 cubic feet for the first 500,000 cubic feet of gas metered per month and 6 cents per 100 cubic feet for all over and above 500,000 cubic feet of gas metered per month.

Minimum charge for each consumer using gas under this service classification, . . . the amount shown under (1) above.

The Brooklyn Union Gas Company claims it has many accounts (nearly 70 per cent of domestic consumers) which are noncompensatory under its existing rate structure, and that the proposed rate schedules will effect a more equitable division of the costs of manufacture and distribution of gas, all of which through the promotion of a more even load will reduce cost of service to its consumers.

It is further urged that the adoption of this schedule will not only result in all domestic consumers' accounts being made compensatory, but that wholesale consumers can receive concessions during off-peak periods and seasons under the principle of a rate structure in which the value of the service as distinct from its cost is a vital factor, in other words a rate producing a more even load and operating to reduce seasonal variation in demand.

In devising the schedule the company has attempted to allocate costs on the theory that they may be accurately distributed between three classes of charges, (1) the initial or customer charges which are distributed on a per meter per month basis for

domestic consumers; (2) commodity charges which are, except for the first 200 cubic feet of gas, allocated on a per 100 cubic feet of gas used basis; and (3) demand charge based on difference in load for wholesale customers. It is the duty of the Commission to consider and interpret this schedule to ascertain if it produces a result which is fair to both domestic and wholesale consumers of gas.

Representatives of the city of New York, of the Peoples' Civic League, of certain associations of consumers, engineers, and other experts of the Commission, and representatives and engineers of the company appeared in this proceeding.

Origin of Proposed Rate:

The proposed rate is what is known as a two-part rate for each class of consumers and was originally derived from the four-part structure sponsored by the American Gas Association. It is really a compromise between a flat or straight meter rate, and one which proposes to equitably allocate all costs under headings descriptive of the character of service rendered.

Since it is a compromise rate, it would be well to first consider briefly the four-part form of rate advocated by the American Gas Association and sometimes referred to as the "scientific" rate. Four classes of costs are allocated and thereafter each class is apportioned among the company's consumers. These are:

1. Production—Demand Costs:

All expenses that depend upon or vary with the size or capacity of the production plant should be allocated to *production demand.*

2. Distribution—Demand Costs:

All expenses that depend upon or vary with all size or capacity of the distribution system should be allocated to *distribution demand.*

3. Commodity Costs:

All expenses that depend upon or vary with the volume of gas produced should be allocated to *commodity.* All costs of labor, fuel, and other material used in the production of gas are allocated to *commodity,* provided they are in proportion to the volume produced. That is, expenses in this class originate only as production begins and cease as production ceases.

4. Customer Costs:

All expenses such as meter reading, the keeping of accounts, and the adjustment of appliances are allocated to *customer.* Interest and depreciation on the part of the distribution system which is governed by the number of customers served, rather than by their hourly demand, is also allocated to customers.

The costs of a gas business as such are assumed to be:

a. Interest on capital invested—the cost of hiring the money required to provide the facilities for doing business.

b. Depreciation or retirement expense—the amount that must be set up to insure the return of 100 per cent of the money which has been hired or, in other words, to provide for the maintaining of the investment.

c. Operation—the cost of producing and distributing the gas and the cost of all incidental services to the customers.

These costs, with the *ad interim* services following in monthly or regular sequence constitute a naturally segregated section of costs, that is, costs due to the initiative of the consumer as distinct from the collective costs of the manufacture and delivery of gas. A minimum bill covers such individual consumers' cost items, and places the extra costs of the reading of meters registering no consumption of gas on the consumer responsible therefor, thus operating to lessen the burden of all consumers.

Existing rates:

In the last analysis the vital thing in any rate structure is the bill which the consumer receives. Is that bill based on an equitable allocation of costs between classes of consumers and among the consumers of each separate class? If so, it is a proper rate. If not, it is necessarily discriminatory, and then the question arises if it is unduly discriminatory and, therefore, unjust under the statute.

The difficulty we find here is the same as in the relations of all utilities with their consumers, that is, consumers are actuated by impulses based on human experience as related to their own personal economic advantage. Individual consumers of gas have difficulty in feeling that the company is entitled to freedom of

burdens not directly connected with the actual receipt and use of the commodity which the utility delivers to them.

The existing rate schedule is based on "flat rates." Undoubtedly—if it be true that nearly 70 per cent of its domestic consumers' accounts are noncompensatory—the present rate structure is unsound and unfair.

Effect of Proposed Rate:

At present a consumer using 1000 cubic feet of gas per month pays $1.15. Under the new rate he pays 95 cents for 200 feet of gas, 72 cents for the next 800 cubic feet or a total of $1.67 for 1000 cubic feet and thereafter at the rate of 90 cents per 1,000 cubic feet.

Exhibit 11 shows that those using from 2,600 to 3,000 cubic feet of gas per month, will, if they use no more gas, pay 8 cents per month more; those who use from 2,100 to 2,500 pay 20 cents per month more; those using from 1,600 to 2,000 pay 32 cents per month more, and consumers using between 1,100 and 1,500 cubic feet will pay 44 cents per month more.

Form of Proposed Rate:

Under the proposed rate the initial charge of 95 cents per meter per month, for which the consumer is entitled to use 200 cubic feet of gas, must be paid whether he uses the stated amount, more, less, or none at all.

So the form of rate structure presents two separate and distinct questions.

1. Is the minimum bill, to be paid by each consumer monthly who may not consume the 200 cubic feet of gas, illegal in that it is prohibited by statute?

2. Is the rate for the first 200 cubic feet of gas per month per meter, or the rate for additional quantities under the proposed rate structure, properly arrived at or is it discriminatory, unfair, or excessive?

"6. Service charges prohibited. Every gas corporation shall charge for gas supplied a fair and reasonable price. No such corporation shall make or impose an additional charge or fee for service or for the installation of apparatus or the use of apparatus . . ." (§ 65 subdiv. 6, P. S. C. Law.)

Does this statute prohibit any charge for costs of service or only an additional charge? If it relates solely to an *additional* charge it can hardly be deemed to have reference to a "service charge" such as that referred to in the Rochester Gas & Electric Corporation Case, 233 N. Y. 39, P.U.R.1922C, 793, 134 N. E. 828; for that case held that a *service charge* and a *minimum charge* were distinct and separate forms of rate.

This entire matter received much consideration from the former Second District Commission and the distinction between the two forms of rates was clearly pointed out by Commissioner Irvine, "Petition of Rochester Gas & Electric Corporation," 24 N. Y. Off. Dept. R. 175, at pages 179, 180, and 182. Similar charges have been established by gas companies throughout the State.

This Commission certainly may not hold that the legislature has forbidden both a service charge and a minimum charge, because to do so would perpetuate a straight commodity rate which is not only inequitable as a matter of economic fact, but has been held so by both the Commission and the court of appeals.

The Record Here:

Two hundred feet of gas is taken in the rate structure as the quantity which a consumer may use without commodity charge, because it is the minimum unit of billing in the company (R. p. 195). The company contends that the cost of supplying this 200 feet is $1.10.

The proposed rate formula was offered by Mr. Blanchfield who testified for the company and was subjected to searching cross examination. He stated that he had not seen nor did he know of the existence of a report prepared by Mr. Merrifield, the gas expert of the Commission, until his formula had been completed and turned over to the company. The Blanchfield formula applied to operating expenses of 1926 resulted in an initial charge of $1.10 for 200 feet or less of gas. For the year 1927 its application produced a figure of $1.05. Use of the Merrifield formula resulted in a slightly less figure, for instance, in 1926 it produced 95.3 cents and for 1927 92.5 cents (Exh. 6, 8).

The evidence of those opposed to the rate structure is herein-

after reviewed at some length, but the only real conflict seemed to be as to the form of the rate. The existence of those customer costs taken in the rate was not seriously questioned.

Mr. Blanchfield, when asked to explain the 95 cent charge, stated:

"No. It is just what it is. It is a charge for 200 feet or less.

Q. Sometimes called a minimum charge?

A. Well, it is a minimum charge; it is an initial charge." (R. p. 377).

The maximum demand in 1926 upon the Brooklyn Union Gas Company was 121,345,000 cubic feet; the maximum day's demand in 1927 was 97,141,000 and the minimum day of the last mentioned year was 40,870,000 cubic feet. This illustrates the great variance of demand and the fact that the company must have reserve gas for consumers, irrespective of the amount of their actual consumption. They must maintain the plant and facilities irrespective of amount consumed and in spite of the fact that the uncontradicted evidence showed that nearly 70 per cent of the consumers do not pay their share of the cost under the present rates. (R. 610, 612.)

Both Professor Bemis and Dr. Bauer conceded in their testimony and exhibits that the element of cost incurred by a gas corporation so far as its convenience users at least are concerned is very real and definite and has been recognized in the rates enforced throughout the country.

As stated, opposition to the proposed rate must necessarily be based largely upon the very definite increase in the bills of those who only use the smallest amount of gas. But the record is clear that unless the convenience user is required to pay his fair share of consumer costs, that is, the cost due to his own initiative, as distinguished from the commodity cost, such costs must be paid by the other users of gas. The corollary to this is that a continuation of the flat rate basis of charges means a tendency to an increased cost to consumer and a restriction on any decrease of cost to large users.

The company's rate expert testified that if more than 200 cubic feet were supplied under the initial rate, the commodity charge of 9 cents per 100 cubic feet must be increased. (R. 196.)

"I mean we cannot reduce the initial cost unless we increase

the commodity rate, nor can we increase the initial quantity without increasing the commodity rate." (R. 198).

He also stated:

"If we take some figure other than 200, we will be required to reduce the entire schedule. These figures that we have there now fit in with the schedule as a whole and if we gave more than 200 feet or charged less than 95 cents or reversed the order of things then the whole story would have to be changed." (R. 109).

It was also insisted that the company had failed to support its cost allocations by direct testimony but had relied on arbitrary conclusions and judgment figures. It must be admitted that this is true to a certain extent; the reason that it is so being well set forth by Dr. Bauer testifying in opposition to the form of rate. He said in substance:

"The formation of a tariff of this sort is a matter of opinion upon the facts and a thorough analysis of the situation, the reasonableness of the old rate and the conditions under which the old rate rests and all the facts taken into account and, therefore, one upon which reasonable men may disagree. Any reasonable man would have before him the facts, the great variations and dissimilarities involved in the costs. *He should know the affairs of the company very thoroughly and not just superficially.* He should get down into the wide variation of costs and conditions affecting different sections and classes of consumers. It would take, depending upon mental ability and power of perception, a period of ten years at least and five years certainly to form acquaintance with the economical and financial questions and issues involved. He would have to know pretty well the allocations, the reasons for the allocations. *The important factor is long training and discipline and experience in that sort of thing.* It is important to know what different classes of employees do but what you must know, what you must have as applied to an individual company is an economic and financial perception of their underlying relations. It can be done by anybody who has the mental ability, training, discipline, and actual understanding." (R. 778, etc.)

So if it is necessary that opinion be relied on in the promulgation of a tariff of this kind, it is apparent that the best grounded

opinion upon which to form a fair judgment as to the equality of the cost allocations was that of the company's rate expert, as his opinion might have been modified and changed by the studies resulting in the formula of Mr. Merrifield.

As presented by the company, this is not a rate proceeding in the sense that the revenue of the company is to be either increased or decreased, but rather one in which it is proposed to so readjust rates that all users of gas will more nearly bear their fair share of the burden of furnishing them with gas. Counsel for the company expressed this thought:

"MR. DYKMAN: I simply want to state to the Commission and for the record, that the company considers this new tariff, Public Service Commission No. 2 which it has filed, and intends it to be a redistribution of expenses and revenues under an existing and lawful tariff, the purpose being to use a more equitable structure, without any intention or purpose on the part of the company to increase the revenue which at the time of the filing of the new tariff it is receiving under an existing lawful tariff. . . . "

"The point I would make, and the point we emphasize is, that this new tariff has been constructed without any intention on the part of the company to increase its revenue, or without any belief on the part of the company that it will increase its revenue, and that we are prepared to substantiate by testimony." (R. p. 21–23).

As has been said, under the proposed schedule, domestic consumers will be charged 95 cents per meter per month, including gas up to 200 cubic feet and 9 cents for each additional 100 cubic feet. This rate is to supersede an existing flat or block rate of $1.15 per 1,000 cubic feet. That the proposed rate will yield substantially the same revenue as that derived under the existing rate is also testified to by Mr. Blanchfield, the company's expert, at pages 203–4 of his testimony.

"THE WITNESS: In order to get the same revenue as we receive at the $1.15 rate, I have made a calculation which shows that if we received 95 cents for the first 200 cubic feet or less, and nine cents for a 100 cubic feet for the gas sold in excess of 200 feet, that will produce approximately the same revenue as we would receive under the $1.15 rate.

"Now there is no question of gas involved here at the present time. It is just simply a question of mathematics.

"If we give more than 200 feet for 95 cents then we will have that much less gas to sell at 9 cents, and in order to produce the same revenue we would have to get more than 9 cents for that gas, and the same is true if we sold 200 feet for less than 95 cents, the loss in revenue due to the reduction below 95 cents as the initial charge, would be required to be made up by adding to the price of the gas over 9 cents beyond 200 feet." (R. 203–4).

An additional reason for the change in rate structure other than those directly stressed by the company, is indicated as a desire to offer a competitive wholesale rate.

"THE WITNESS: This tariff schedule and the rates under it, reducing as it does the price of gas from $1.15 to 90 cents a 1,000, we hope will have the effect of inducing a greater consumption of gas, not only among our domestic customers, but also among our commercial and industrial customers.

"It will open a field for my company now closed to it, through the present rate, and we hope that by getting the greatest advantage we can, in competition with other forms of fuel, to bring about an increase in our business, and thereby giving every consumer irrespective of the schedule under which he takes his service, an opportunity to get increased service at reduced cost." (Testimony of Blanchfield Rec. 131–132).

Customers of Convenience:

Under a flat rate when unlocked meters record no consumption of gas or not enough to be compensatory, the burden of course is not borne by the utility but is shifted to other consumers. The record sustains a finding that there are many customers of convenience among the consumers of this company, and that they are and have been served at a loss. So we have not only a problem of economic waste, but a rate situation (the flat rate now in effect) that is discriminatory. The problem is to devise a rate structure that will automatically make all accounts compensatory without introducing graver inequalities than those attempted to be relieved. The elimination of waste, due to the seasonal variation of load, is one problem. Equalization of load and a rate structure under which all accounts will be compensatory is another problem, and the two must be considered separately.

It can be appreciated that some line of demarcation must

exist between costs due directly to consumer initiative and those due to company initiative or, in other words, to the company's pursuit of additional business. On the one hand, we have a consumer who desires to use gas. The company, in theory, keeps an inexhaustible supply of gas at the door of the consumers' premises for use when and as needed. This supply of gas is produced for consumers collectively. The cost of having this gas available ought, therefore, to be apportioned on the volume of gas which a consumer uses, as modified, however, by such application of the load factor as is fair and just. No gas can be furnished until the consumer directly or by proxy becomes linked with the distribution system of the company. Will the rate structure proposed correct the inequalities? The two basic issues involved are:

(1) Do noncompensatory accounts exist to such a degree as the company alleges, or can the existing rate structure be modified so as to make all accounts automatically compensatory without an upheaval in rate schedules?

(2) Can wholesale rates be determined in accordance with economic principles, whereby the cost principle is supplemented by the value of the service principle to the advantage of all consumers in the promotion of a more even load.

Allocation of Costs:

In considering these questions, we must not confuse the matter to which cost is a factor with the other things which have to do with public policy. The starting point of any analysis of rates is the cost of the service including a reasonable return on the fair value of the property used in rendering the service. There are always direct burdens and common burdens.

Certain costs seem to require allocation to the consumer. These are, firstly,

(a) Bookkeeping (customers' accounts).

(b) Reading of meters, billing, etc.

(c) Return, taxes, and insurance on commercial premises.

All should be comparatively easy of segregation and apportionment.

Secondly, there are company costs, that is, the making and

delivery of gas to consumers' premises. Such costs can be exactly proportioned on the amount of gas used, and if required be modified by the load factor and further, if equitable and required, by the value of the service principle.

Thirdly, wholesale rates for business purposes during off peak periods may be devised to cover the direct cost of manufacture and delivery, including maintenance and, in addition thereto, if equitable and required, an amount based on the value of the service.

In the rate structure urged by the company (the so-called two-part rate), the total operating burden including return is divided into charges that are apportioned among customers on a per meter basis and those that are apportioned among them on the volume of gas used basis. The customer or initial charge is 95 cents per month which includes the use of 200 cubic feet of gas. The other or commodity charge is 9 cents per 100 cubic feet of gas. The foregoing applies to the domestic rate. The evidence is not as clear as could be desired as to the genesis of the wholesale rate. Company exhibit 6 shows the allocation for 1926 and the source of the initial charge (95 cents):

Exhibit 6—The Brooklyn Union Gas Company

Allocation of Expenses to Initial Charge as to Commodity Charge

Expenses	Total	Initial Charge	Commodity Charge
Production	$11,938,104	.....	$11,938,104
Transmission and distribution	2,825,378	$2,017,588	807,790
Street lighting	3,818	.....	3,818
Commercial	1,895,196	1,895,196	.....
New business	562,686	.....	562,686
Miscellaneous	1,574,684	577,781	996,903
Retirement expenses	603,531	40,437	563,094
Uncollectible bills	203,488	13,634	189,854
Taxes	2,048,167	550,957	1,497,210
Total	$21,655,052	$5,095,593	$16,559,459
Less miscellaneous operating revenue	682,188	.....	682,188
Net operating expenses	$20,972,864	$5,095,593	$15,877,271
Net revenue	5,895,322	1,585,959	4,309,363
Total revenue	$26,868,186	$6,681,552	$20,186,634
Average customers			654,381
Average per customer per year			10.21
Average per customer per month			.851
Add 200 cubic feet at 50.82			.102
			.953

This exhibit covers the 1926 income statement re-arranged so as to show the operating burden allocated to the initial charge and also the amount assigned to the commodity charge, including the net revenue allocated to each part of the two-part rate. It is to be noted that all production expenses are included in the commodity charge. Exhibit 9 (data for 1927) shows the detailed allocation of the other operating costs exclusive of return. That exhibit was:

Exhibit 9—The Brooklyn Union Gas Company

Allocation of Expenses to Initial Charge and to Commodity Charge

Distribution expenses:				
Transmission pumping	$314,451	7.3	$22,955	$291,496
Distribution superintendence	742,502	53.7	398,724	343,778
Distribution supplies and expenses	142,557	53.7	76,553	66,004
Maintaining installations	192,004	100.	192,004	.....
Work on consumers premises	99,151	100.	99,151	.....
Removing and resetting meters	373,564	100.	373,564	.....
Maintenance of mains	450.747	53.7	242,051	208,696
Maintenance of service	210,375	100.	210,375	.....
Maintenance of shop buildings	2,795	53.7	1,501	1,294
Maintenance of distribution implements	23,961	53.7	12,867	11,094
Maintenance of consumers meters	389,726	100.	389,726	.....
Total distribution expenses	$2,941,833		$2,019,471	$922,362
Commercial expenses	$1,942,987	100.	$1,942,987	.....
New business	588,419			
General and miscellaneous expenses:				
Administrative salaries	$208,315	44.4	$92,492	$115,823
Other general office salaries	395,937	44.4	175,796	220,141
General office supplies and expenses	32,645	44.4	14,494	18,151
Maintenance of general structures	37,121	44.4	16,482	20,639
Law expenses	23.389	7.3	1,707	21,682
Insurance	286,921	7.3	20,945	265,976
Store expenses	231,264	44.4	102,681	128,583
Stationery and printing	872	44.4	387	485
Pensions	64,735	44.4	28,742	35,993
Undistributed adjustments	9,884	44.4	4,388	5,496
Other miscellaneous general expenses	367.394	44.4	163,123	204.271
Regulatory commission expenses	5,181	44.4	2,300	2,881
Total general and miscellaneous expenses	$1,663,658		$623,537	$1,040,121
Retirement expenses	$558,494	7.3	$40,770	$517,724
Uncollectible bills	141,792	7.3	10,351	131,441
Taxes	2,001,300	26.9	538,350	1,462,950

Contentions of the city of New York:

In a memorandum, dated January 6, 1928, filed with the exhibits in Case 4458 (The Brooklyn Borough Gas Company

proceeding), Dr. Bauer presented the views he amplified in his testimony. The excerpts therefrom which follow constitute a brief resume of his evidence:

". . . there are certain costs that do depend directly and immediately upon the number of consumers and are properly covered either by a service charge or by an equivalent initial charge. The question is upon what principles should a service or initial charge be determined. . . ."

"The consumer contends that the dollar charge per month as fixed by the company is excessive; that it materially exceeds the costs that are properly included in an initial charge. The company has prepared four schedules of tabulations to justify the dollar charge. . . ."

"In presenting this analysis, the consumers do not consider that any determination has ever been made as to the issues here involved. While the Commission in a number of cases has been confronted with the service charge, or its equivalent the initial charge, it has apparently never considered the character of items to be included or the proportion to be applied to each class. . . ."

"First of all, to make clear the difference in principle between company and consumers, all the costs or charges of the company may be conveniently separated into three groups:

"1. Charges which depend directly and immediately upon the *amount of gas produced* and distributed; the *commodity of gas costs.*

"2. Charges which depend directly and immediately upon the *number of consumers* attached to the business; *the consumers costs.*

"3. Charges which do *not* depend directly and immediately *either* upon the *number of consumers* attached to the business or the amount of gas manufactured and distributed; the non-variable or fixed costs.

"As to the first group, there is no dispute either as to the principle or as to its application to the charges to be included. The charges should be borne by the consumers according to the *amount* of gas used and should be represented by a given rate per hundred or per thousand cubic feet.

"There is sharp disagreement, however, as to groups two and three. The consumers believe that the service charge or the substitute initial charge should be limited to group two, while the company contends that it should include group three, but it apparently does not admit that there is a fundamental distinction between the two groups as here presented. . . ."

"Group two consists of all costs that are directly or immediately due to the attachment of consumers; the immediate *out of pocket* costs incurred because of any given consumer attached to the business. They represent the difference in direct cost due to the fact whether or not on any street served by the company a given consumer, or several, are attached to the business. If they are attached, then the company incurs certain inevitable outlays in connection with the meter reading, accounting, collection, maintenance of meter, depreciation of meter, return on meter, and repairs on premises. A consumer attached to the business causes such immediate and direct additional costs. A person not attached but in the territory served so that he could be connected does not cause such outlays. The amount properly included in the service charge, or the initial charge, is determined by such costs; the difference to the company whether a person in the territory already served is or is not attached as a consumer.

"If a service or initial charge is based upon these costs, the company does not lose money on any consumer whether he uses a small or large amount of gas or no gas whatever. All the direct out-of-pocket costs due to the hook-up are included."

The foregoing statements relate to the "General Service Rate," otherwise known as the rate for domestic consumers. Concerning the "Wholesale Service Rate" or that for commercial, house and water heating, hotel and restaurant use, Dr. Bauer says:

"In conclusion it is well to make clear that the above discussion relates wholly to domestic consumers and to the scope of use for ordinary domestic purposes. It does not apply, however, to commercial use, or to the newer application of gas to house heating. For all such purposes a different line of consideration may properly be followed to fix reasonable rates. These are primarily

competitive uses, so that rates may be fixed upon a competitive basis. Generally speaking the policy might be adopted for such purposes to base the rates primarily upon groups one and two, and then to include an apportionment of group three, the non-variable charges, according to competitive expediency. If any such consumer pays the direct and immediate costs involved in the production of gas and in dealing with the consumer, then anything paid above that amount helps to defray to that extent the non-variable costs of group three resting upon the company. The amount of the additional contribution might be predicated primarily upon the competitive expediency. But any contribution to the non-variable charges by the competitive users would serve to that extent as a relief to the ordinary domestic consumers in their relative contribution to this important class of costs incurred by the company.

In his testimony, Dr. Bauer suggested that experimentation should precede serious effort to attach customers at the wholesale rates contained in the proposed rate schedule.

The line of demarcation between costs that may be allocated among consumers on a per meter basis and those that should be allocated a per 100 cubic feet of gas used basis must be drawn somewhat arbitrarily as there are no gaps in gas enterprise between the so called *consumer of convenience* accounts or accounts that cover costs due to the customer's initiative and those that do not. Dr. Bauer introduced Exhibit 21, reproduced herewith, as an introduction to his detailed analysis of the situation:

[Exhibit 21 for Identification]

Brooklyn Union Gas System

Apportionment of Consumer Service Costs

Year 1926.

Acct. No.	Consumer service costs	Total cost	Apportionment on consumer basis		Monthly cost per consumer cents
			Per cent	Amount	
761.1	Commercial general labor	$572,158.02	33⅓	$190,719.34	2.402
761.21	Commercial bookkeeping	489,556.49	100	489,556.49	6.167
761.31	Commercial collecting ..	319,626.99	66⅔	213,084.66	2.685
761.32	Meter reading	206,324.15	100	206,324.15	2.599
761.4	Commercial supplies and expenses	218,548.06	66⅔	145,698.71	1.836
	Total commercial expenses	$1,806,213.71	...	$1,245,383.35	15.689

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	Consumer job costs				
721.31	Maintaining installations	$230,826.99	....	.....	2.908
721.32	Work on consumers' premises	87,390.85	....	.....	1.101
721.4	Removing and resetting meters	382,351.90	....	.....	4.817
722.2	Maintenance of services	209,102.91	....	.....	2.634
733	Maintenance of consumers' meters	454,081.52	....	.....	5.720
	Total consumers maintenance ..	$1,363,754.17	....	.....	17.180

NOTE: The figures in the first column were transcribed from the Company's annual reports filed with the Public Service Commission. The monthly cost per consumer was obtained by dividing the given amount by the average number of meters, 661.507 multiplied by 12.

Schedule No. 2

The two-fold division of the exhibit and the percentage allocation of some of the accounts indicate that there is room for difference of opinion as to what items should be distributed on a per meter basis and what items on a per 100 cubic feet or use basis. In regard thereto Dr. Bauer states:

A. I have set out here in Exhibit 21 for identification all of the different classes of costs that have any variation with the number of consumers considered as consumers.

The figures were taken from the company's annual report, for the year 1926, to this Commission.

That is, the basic figures were taken from that report. On the left side of the statement, the account numbers are given, then the description of the account, the amount for each account is taken from the company's annual reports.

In the remaining statement, I have made the allocations on the consumer basis, and have presented the amounts in terms of monthly costs per consumer.

I have presented these costs that do have a relation to the consumers as consumers in two groups. In the top statement, I have what I have classed consumer service costs.

In the lower part, I have what I have called consumer job costs. The distinction between the two groups is that in the upper group there is a more or less regular relation of the expenses in accord with monthly operations or monthly work, done by the company.

If, therefore, a consumer is attached in the upper part of the table, the expenses there stated to have a relationship and a variation with the number of consumers attached, as consumers.

If the amount is reduced, if the number of consumers is reduced or increased, there is a tendency to change in the amount to correspond, and the amounts are related to the regular monthly operations.

The second group, consumer job costs, are also identified with consumers as consumers, but they do not depend in any way upon regular monthly work done or operation performed by the company.

The work is spasmodic or periodical and irregular as between individual consumers, and numbers of consumers.

In a scientific rate structure, if the effort were to be made to make a very close and exact cost apportionment, for each consumer or group of consumers, the latter part, the latter costs, should be properly charged on a job basis.

Q. When you say the latter costs, you are referring to the items under consumer job costs?

A. That is correct. For example, any work on consumers' premises, if a very exact scientific cost rate schedule were to be introduced, the consumer would be billed for actual work done. Those amounts have heretofore all been provided on a use basis. They have been absorbed in the flat rate.

I see no reason why that schedule should be altered. I see no particular injustice in continuing with that. There would be just as much injustice or a greater injustice if these costs that I have termed some consumers' job costs, were to be put upon an equal average consumer basis month by month. I might call attention to one particular matter. One person is very careful in his premises. Another is very careless. The difference occasions a great difference in the amount of work done as between the two consumers, on the meters in their respective premises and installations.

There is no justice for putting such charges on an equal monthly basis.

There is no reason at all for changing it, but if it were to be changed, it is merely shifting from one unscientific element to another, and I think a more unjustly unscientific basis.

On the right side of the schedule I have given the cents per month, per consumer, apportioned on a consumer basis. This

amounts per month for commercial general labor 2.4 cents,—that is, two cents,—I won't stop to read those—the total for all five accounts is 15.7 cents.

This would be the total operating expenses, that is variable, somewhat closely, more or less directly in some of the elements less with the number of consumers, as consumers.

This I think includes all of the costs that are so variable, except the element of meters in place; for the meters in place, I haven't included here an item that is a return for meter in place. I have not included that element here, because I did not, when the schedule was prepared, have a definite figure for that. For the cost of meter, since then, I have seen the figures, and I have made a computation, and that might come to 5,—between 5 and six cents per month per consumer for the ordinary five light meter.

Over 90 per cent of all of the consumers have five light meters, consequently 5 to 6 cents cover the normal, the return for the ordinary meter in use. The maximum, therefore, of the charge or cost, including all elements that vary more or less with the number of consumers as consumers, would go to 20 to 21 cents, possibly 22 cents per month per consumer for this company.

In the interpretation of Exhibit 21, Dr. Bauer discussed the cost items that may be allocated on a per meter basis and those that are on the border line. In what follows he criticises the company's allocation of a per cent of certain accounts for distribution on a per meter basis and the remaining per cent on a use basis. His detailed analysis of one item is representative of his treatment of all similar items. For instance, maintenance of mains:

Q. Now, will you please take the detailed statement of cost analysis for 1927, I believe, marked Exhibit No. 9 in evidence.

A. I have it.

Q. And direct yourself particularly to the item of maintenance of mains. Will you first please state whether in your opinion the cost of maintenance of mains varies with the actual increase in mains and the gas sold, and if so, give your reasons.

A. The increase in this item, maintenance of mains, does depend exclusively on the,—or practically exclusively, on the exten-

sion in length of mains, and not at all to the number of consumers considered as consumers.

Q. Now, please give your reason for that conclusion.

A. The mains are laid of course in the street. So far as the mains themselves are concerned there is maintained in them, as nearly as possible, a constant pressure. Hence, the number of consumers who are attached, so far as the number of consumers is concerned, that is, consumers as consumers, has no influence whatever on those mains.

So far as the mains are concerned, it is the gas pressure that produces deterioration, or wear, or what not and not the consumers considered as consumers.

As there is variation in pressure, that naturally comes from the gas company, taken out through use, and additional gas being pumped in, that process again has nothing to do with consumers as consumers.

It involves merely variation due to use of gas so far as quantity is concerned. What determines, therefore, the cost of maintenance of mains is the use of the gas, but the dominant factor is the condition of soil, and the conditions of the street, . . . and forces that are brought upon the mains which have no relation whatever to the number of consumers considered as consumers.

If, therefore, on any given stretch of mains, whether it is a block or mile, taking a given stretch, the addition of 10 per cent in the number of consumers, or 50 per cent or 100 per cent, would not affect the maintenance of mains at all.

So far as there would be any influence, is might, and that would not be a controlling factor; it would be in the greater use, that is, the greater amount of volume of gas that flowed through the mains, and the variation of pressure produced as a consequence of tapping out of gas and the pumping in of gas, but that is a matter of volume of gas and not a matter of number of consumers.

I have studied this schedule carefully, and have considered the items that are included in the maintenance of mains, and I believe that there is not any justification whatever for changing the method of providing for this class of expense.

Heretofore, the entire amount for maintenance of mains has been included in the flat rate so far as the domestic consumers are concerned.

They are, of course, the great bulk of the consumers, and include the great bulk of the quantity of consumption.

In other words, heretofore this expense has been provided for on the basis of quantity of gas used so much per hundred cubic feet, or so much per thousand cubic feet.

It has been provided for as I will term it, on the use basis instead of on the consumer basis.

I see no reason whatever for changing the method of providing for this form of expense.

The mains are put in for the purpose of enlarging the business of the company.

Those new mains are put in for that purpose.

They are put in with the expectation of selling at least a good amount of gas. They are put in to sell the gas, not to get attached customers.

Of course, the gas is sold through attached customers.

But the business, the operations, involve the sale of gas, and not the customers.

There is no injustice of any sort to have this class of expense covered wholly one hundred per cent by the flat or use basis.

In short, Dr. Bauer holds that the flat rate is a far more equitable rate than the proposed rate and, if the procedure is legal, can be made equitable by the device of allocating on a per meter basis the charges which depend directly and immediately upon the number of consumers attached.

In the quotations taken from Dr. Bauer's testimony he has treated, in principle, all items assigned by the company's expert to the "Initial Charge" save that of net revenue. Concerning it he testified:

The net revenue is given as $5,895,322. Of this amount, $1,585,959 is apportioned to the initial charge. I think there is no justification in that apportionment. There is no reason why any appreciable amount of the net revenue should be allocated on a consumer basis. The only part that could be properly so allocated is the amount applicable to the return on the meter in

use. This, however, places a very large percentage on the consumer basis.

The allocation is wholly arbitrary and it hasn't any justification in fact. My understanding is, although there were no supplementary exhibits, that the revenue, the net revenue allocation is based upon a property allocation that Mr. Blanchfield made. He allocated the net revenue to the initial charge in the same way as he allocated the aggregate property in use to the initial charge or to the consumers.

The analysis of the proposed rate schedule by Dr. Bauer impels him to give a qualified endorsement to the allocation of some costs to consumers as customers on a per meter per month basis provided such a charge is legal. His views in this respect were brought out by counsel in his testimony in connection with exhibit 21. See pages 711–712 of the record.

. . . For the expenses here stated, there would be the maximum monthly service charge, that might be justified on a consumer basis, would be 15.7 cents, including meters, the return on meters, it might, the maximum might be 22 cents.

However, in that, there would be inequalities as between groups of consumers.

Now, of course, this is a service charge proposition. I wish to make clear that only if a service charge were legal, and if a service charge could eliminate the inequalities that I mentioned, the 22 cents might on the basis of this schedule, with the other testimony I gave, might be justified.

But that is the maximum that might be justified, and I wish to rather emphasize that there would be discriminatory factors, and inequalities involved in that, assuming that it all were legal.

The memorandum, exhibits, and testimony of Dr. Bauer seems to entirely omit any weight for the demand factor made necessary by the unevenness of the load, and to limit the customer charge to a fraction of the cost of the commercial activities only involved in collecting the revenue from the sale of gas.

Evidence of Professor Bemis:

Professor Bemis arrives at virtually the same result as Dr. Bauer so far as concerns domestic consumers. In the detailed

working out of the final result their methods are different. Because of this difference in method but virtually the came conclusion as to the proper amount that in a minimum bill, 25 cents by the former and 22 cents by the latter per meter per month, the final conclusion of one of them seems to carry with it the endorsement of the other.

Professor Bemis finds no clear line of demarcation between the various accounts so that costs could be allocated to the end that those of one group would carry as that of the number of attached meters and the other as the volume of gas used. Some operating expenses tend to vary somewhat with the number of consumers and may bear a closer relation to consumers as customers than to the volume of gas used. They are few and unimportant. He states on page 4 of exhibit 29:

If any expenses are to be apportioned equally to all consumers, instead of being apportioned to the quantity of gas sold, the expense connected with the reading of the meter and the collection of the bills is more easily defensible.

Meter reading and collecting has some appearance of equality between different consumers, independent of the amount of gas used. Nevertheless, even here, the extent of congestion of the population and the meters in different places enables the reader to read twice as many meters a day in some sections as in other sections. Furthermore, prepayment meters usually take a longer time to visit than the regular meters, because they are located in apartments rather than in basements. In case the occupant of the apartment is away, a second or third visit may be necessary in order to reach the prepayment meter, while the regular meters are usually easily reached in the basement, where there may be a dozen or more meters side by side.

Passing over this indication that an equal charge for reading and collecting does not apportion the costs with entire accuracy, it is important to note what are the average costs per meter.

The method employed by Professor Bemis to compute the average cost per meter per month of the two sub-accounts, "meter reading" and "commercial collecting," seems sound and reasonable:

Cost of Meter Reading and Collecting—Private Meters.

Year	Average number of meters	Cost of meter reading and collecting	Average cost per meter per year	Average per month
1924	625,266	$483,024	77.25¢	.....
1925	643,579	499,752	74.65¢	.....
1926	661,507	525,951	79.51¢	.....
1927	679,401	540,478	79.55¢	.....
	2,609,753	$2,049,205	75.52¢	6.54¢

(Ex. 25—page 9.)

The observations prefatory to the summary of meter reading and commercial collecting apply with nearly as much force to the two sub-accounts "commercial bookkeeping" and "commercial contracts." The method used is the same and the result is equally persuasive.

COMMERCIAL BOOKKEEPING AND CONTRACTS

(761.2)

This item, consisting mostly of bookkeeping, includes the cost of labor of bookkeepers and clerks employed on consumers' accounts, and in the application or contract bureau.

These expenses since 1923 have been as follows:

Year	Average number of meters	Commercial bookkeeping and contracts	Average per meter per year	Average per month
1924	625,266	$503,892	80.59¢	.....
1925	643,579	519,683	80.75¢	.....
1926	661,507	578,539	87.46¢	.....
1927	679,401	587,396	86.46¢	.....
Total	2,609,753	$2,189,510	83.90¢	7 cents

The only other item that he finds conscionable in a minimum bill is the return on the meter in the exclusive use of a customer and its maintenance coupled with a small retirement charge. On the threshold of his discussion of this phase of the proposed rate, he shows how he arrived at the cost of a meter in place is concise. See exhibit 29, pages 7 and 8:

. . . This would make the average cost of meters and installations $12.38, on the basis of the actual claimed cost new, of all sizes, and $13.13 on the basis of adjudicated value. Nearly all the meters used by domestic consumers are the cheaper 3-light and 5-light meters, with correspondingly small installation costs. P.U.R.1929D.

Data are not at hand for determining what reduction should be made in the case of this company from the average of all consumers, so as to cover the domestic consumers. I have reason, however, to believe that a conservative estimate of the average meter and installation costs would not exceed 90 per cent of the figures just given for all meters. This would make the average actual cost of the domestic meters and installations $11.14, and the average adjudicated value $11.82.

7 per cent return on the actual claimed cost would be 78 cents a year, or per month 6.50 cents.

7 per cent return on the adjudicated cost would be 82.7 cents a year, or per month 6.89 cents.

Even in the case of a 3-light or 5-light meter, however, there are evidently differences of cost of installation, dependent upon the distance of the individual consumer from the nearest meter shop, the extent to which several installations in the same neighborhood can be made on the same trip, and the difference in the ease of setting meters in various basements or other places.

To a 7 per cent return on the claimed cost or adjudicated value of the meters and their installation, might be added the average cost of the maintenance and withdrawals as shown in the following table:

Maintenance of Consumers Meters
(723)

Year	Average Number of private meters	Maintenance	Average per meter per year	Average per month
1924	625,266	$476,709	76.24¢	.....
1925	643,579	491,682	76.40¢	.....
1926	661,507	454,081	68.64¢	.....
1927	679,401	389,726	57.36¢	.....
	2,609,753	$1,812,198	69.44¢	5.80¢

This includes meters far from any repair shop, and those hard to repair, as well as those quickly reached and cheaply repaired.

The averages above are necessarily raised by including therein thousands of meters much larger and more expensive than the average domestic meters.

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METER WITHDRAWALS

The final retirement of meters because of depreciation is a small cost, as follows:

Year	Average number of private meters	Withdrawals of meters	Average per meter per year	Average per month
1924	625,266	$14,191.49	2.27¢	.....
1925	643,579	35,970.64	5.59¢	.....
1926	661,507	31,674.02	4.79¢	.....
1927	679,401	52,384.64	7.71¢	.....
	2,609,753	$134.220.79	5.14¢	0.43¢

Summary of Meter Costs

There are no taxes or insurance on meters.

The maintenance of the average meter, and 7 per cent on its claimed cost and on its adjudicated value is then:

	On basis of claimed cost	On basis of adjudicated value
7 per cent return	6.50¢	6.89¢
Maintenance	5.80¢	5.80¢
Retirements	.43¢	.43¢
Total	12.73¢	13.12¢

The total of the foregoing is 26.27 cents if a 7 per cent return on the claimed cost is included and 26.66 if it includes a 7 per cent return on the adjudicated cost. His final observation in respect thereto is to the effect that a maximum estimate would not exceed 27 cents.

But upon cross examination it developed that retirements of meters are treated in two different places in the annual report and that, as a result, the larger item was overlooked. With that included the charge for retirements would be 2.51 cents rather than 0.43 cents as given.

Professor Bemis did not divide accounts. It would appear that "turning on and off gas" in the account 721.4, "Removing and Resetting Meters" should be included with the foregoing. That, with the increase in the retirement charge, would increase the 27 cents to about 30 cents. It would appear that his analysis with this addendum justified a minimum bill of 30 cents without any gas furnished.

From the foregoing discussion of costs that tend to vary with

the number of consumers rather than with the volume of gas used, Professor Bemis proceeds to a discussion of costs included in accounts that may have some relation, in whole or in part, to the number of consumers but whose relation thereto is less obvious than those just discussed. These costs relate to return and maintenance of services, removing and resetting meters, maintaining installations, work on consumers' premises, commercial general labor, and commercial expenses. The ensemble of these costs per meter per month he computed to be 25.36 cents on a cost basis and 29.91 cents on the adjudicated value basis.

Concerning the items of cost under the head of services, he says on page 11 of exhibit 29:

"There is a great difference in the cost of services and their maintenance. This results from differences in size, soil, paving, and distance from store yards. Therefore, an equal distribution of service costs to each consumer would not be an accurate apportionment according to cost. The larger and more expensive are for conveying a larger quantity of gas."

Concerning those costs of the foregoing accounts that are incurred on the premises of consumers he says on page 12 of the same exhibit:

"In rendering this service, the costs vary widely with different consumers, and might well be paid for in the price of gas, rather than to be charged equally to each consumer."

Those costs referred to above that are incurred in the commercial offices are disposed of in the following observation taken from page 13 of this exhibit:

"These expenses, totaling 9.33 cents a month, cover superintendents, clerks, stenographers, switchboard operators, janitors, watchmen, car fare of employees in the commercial department, etc. Many of these are general expenses that do not vary very closely with the number of consumers accounts. What, if any, should be apportioned to consumers as a service charge would be speculative, and is not here attempted."

The remaining costs, that is, those relating directly to the manufacture of gas and relating to its delivery at the meters of consumers, he treats on pages 14 and 15 of the same exhibit as follows:

"All other distribution, new business, general and miscellaneous expenses seem much more closely related to the quantity of gas sold than to the number of consumers. There may be some relation between some of these expenses and the number of consumers, but the extent of this relation is very speculative; and as between one consumer and another the relation is not sufficiently clear to be the basis of an equal service charge, on the assumption of equal costs.

"Only half of the distribution superintendence and supplies is claimed by Mr. Merrifield, in the Brooklyn Borough Case as consumer costs. Still more speculative is the apportionment of administrative and general costs, and other items.

"Any apportionment to the consumer of a third or any other portion of the maintenance of mains or administration and general expenses, taxes, etc., is arbitrary, and even discriminatory.

"It is sometimes asserted that a gas company must be equally ready to serve any consumer the moment the burner is turned on and lighted, and that this cost, therefore, should be equally apportioned.

"Compare, however, the case of two consumers: One is located near the works, and has only three or four small burners, supplied from a main which serves 100 consumers in the block. The other consumer, with a four-burner stove and oven, a gas grate and a hot water heater, may live five miles from the works, and may be supplied by a main that serves only four in the block. He entails more leakage. When he complains of his meter a longer trip must be taken by the investigator. When he moves, as he may do oftener than the small consumer, the expenses for locking and unlocking his meter is greater. Every time he turns on his burner he can, and often does, use five times as much gas as does the smaller user, thus entailing five times as great demand on the company's manufacturing and storage plant and mains.

"Who can prove that either the demand costs or distribution, commercial, administrative, and other expenses are the same, or anywhere near the same, for these two consumers? Do they not vary far more with the quantity of gas used than with any other factor? Would not the company's proposal entail greater discrimination than it seems to avoid?"

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This completes his analysis of the three types of costs from the standpoint of their variance in relation to the number of consumers or in relation to the volume of gas used per consumer. He finds that no exact relation exists between the costs incurred for individual consumers and any possible computed cost. Nearly all costs incurred bear a closer relation to the volume of gas consumed than to the number of consumers attached. He concludes, Rec. f. 1042:

"There is neither minimum bill nor service charge in Philadelphia, Baltimore and Washington. In Boston, there is a minimum bill of 50 cents, but no charge is made if a consumer uses $6 worth of gas per year. Outside the area served by the Brooklyn Borough Gas Company, whose rate is now being investigated by the Public Service Commission, there is no place of 150,000 population in the United States that has as high an initial charge as is proposed here. There are only six such cities with over 50,000 population.

"Under all the circumstances a 77 cents readiness to service charge, or its equivalent, seems against public policy.

"Most people will concede the fairness of some charge for reading the meter and billing, where little or no gas is used and the meter is retained as a convenience during some months of the year at least. Hence a minimum bill of 25 cents a month, from which the worth of the gas actually used should be deducted with yearly adjustments, would be fair, and would probably meet with little criticism."

The evidence of Professor Bemis and Dr. Bauer shows that what they are really opposed to is the form of the rate structure rather than the general principles underlying it.

In making his cost allocations, it is felt tht Dr. Bauer did not give sufficient consideration to difference in load in dealing with the factors on which the demand charge rests. In delimiting the costs applicable to the so-called initial charge, it would seem that the return on property on consumers' premises, as well as the taxes and that the return on premises occupied by the personnel of the commercial department with the applicable insurance and taxes, should be assigned and apportioned among consumers.

For the company's exhibits and testimony tended to show that when proper weight is given to difference in load, the 95 cent initial charge, coupled with 9 cents for each additional 100 cubic feet of gas actually delivered, does little more than cover the costs thereof to the company for customers of convenience.

Professor Bemis concerned himself solely with the rate for domestic customers and so did not treat allocation of costs between them and the wholesale users. The matters of difference in load which could have been ascertained would have undoubtedly made a marked difference.

Careful consideration of the record impels a conclusion that it is impossible to deal with the initial charge understandingly except as an integral part of the rate structure as a whole with consideration for difference in load and the demands of wholesale users. Nevertheless, it is true that some of the issues raised by these two witnesses were such as to require, as Dr. Bauer expressed it, a period of experimentation before the demand charge here offered is made permanent. If their evidence points a way to a change in such initial charge it is a fair criticism that it does not go far enough. The fact is that neither disagrees with the form of the rate and the necessity of an initial charge if such form of rate is legal and proper.

With regard to the claimed difference or deductions from costs as allocated by the company, the testimony of Dr. Bauer under cross examination on page 760 *et seq.* of the record is most informative.

Contentions of Peoples Civic League:

This organization was represented by former Mayor Hylan and his former Deputy Commissioner, Cornelius N. Sheehan. The issue as they conceived it was that under the proposed rate structure there is to be a charge of 95 cents per month even though no gas is used and this they contend was a service charge. In addition thereto, it was reiterated that more than two-thirds of the domestic consumers would have their monthly bills increased and that the total of this increase was approximately $2,500,000. The later point was already in evidence and conceded inasmuch as from the company's point of view these ac-

counts were not only noncompensatory in the amount of at least the proposed increase but in excess of that amount.

Let us examine the contention of this organization that the initial charge of 95 cents, when no gas is used, is a charge for which no service is rendered. Is there an obligation on the part of consumers to make their accounts compensatory? The issue raised by the company is not met by pointing to the extent of consumers affected or the amount of the increase to those whose bills will be increased. Analysis must either show that the flat rate is compensatory for virtually all consumers when viewed over a year, or, if not, that an initial charge of a smaller amount will make all accounts compensatory.

The representatives of this organization appear to have misconceived the meaning and nature of service. An application for gas is received. It is filed. That is service. The meter is unlocked. That is service. The meter is read but shows no consumption of gas. The reading and re-reading of the meter is service. The necessary routine in connection with the account (reading meter and its notation in the office is repeated month after month) is continued and is an integral part of the burden on the company.

The consumer of convenience gets a service even though he uses no gas. He is probably less inconvenienced by an initial charge of the cost to the company of an unlocked meter, that is, to him the cost of keeping the account (say 30 cents per meter per month) than to have the meter locked and unlocked as gas was needed and not needed due to absence from the premises. Even then the return on the meter might be an implied obligation.

The representatives of this organization also claim that the proposed rate will yield an increase in net revenue in excess of a half million dollars and that it is contrary to the contention of the company. That result is predicated on the assumption that the same volume of gas is consumed.

Turn to exhibit 27A. Observe the first horizontal line of figures and also the last column. It shows, owing to the initial charge of 95 cents that a consumer using only 100 cubic feet of gas per month pays at the rate of $9.50 per thousand cubic

feet. But the actual charge per 1,000 cubic feet is $1.67. Such an analysis may be good politics but is misleading. At the flat rate, the amount of the bill would be 11.5 cents per 100 cubic feet. Such an account as the one on the first line is non-compensatory if it is typical for a year. But is it? Such characterization of this exhibit represents, in varying degree, all of exhibit 27A–G. It is not shown that all accounts are compensatory. There are accounts with unlocked meters registering no consumption of gas. They are *per se* non-compensatory during the months in which no consumption of gas is recorded. No evidence is presented to show that the account of *consumers of convenience* are compensatory. The contention of the company that they are not has evidence to support it. The fact that bills of some consumers will be increased is information, not only admitted by the company, but is the underlying purpose of the proposed rate structure and to stress it by many statistical summaries, is not proof that the increase is not warranted. The real issue is not that there will be an increase in bills but whether the increase is legal in form, is fair and equitable and in harmony with underlying principles of rate making.

Conclusions:

The evidence establishes that there are non-compensatory accounts; that under present rates little weight is given to the load factor; and that there is small opportunity to promulgate wholesale rates.

The present flat rates of the Brooklyn Union Gas Company are unjust and unduly discriminatory in that customers of convenience are carried at the expense of other consumers.

The method of approach to a scientific rate structure would seem to be at the point where the flat rate (present rate) principle has broken down in practice; the uneven manner in which gas is used daily and seasonably requires that consideration be given to the load factor.

Allocation of consumer costs should be founded on factual data; it will necessarily vary with the situation of the company concerned. It can not be based on arbitrary formulae,

except in so far as a formula may prescribe the character of the allocated charges and the method of using such allocations.

It is believed that it should be possible to disentangle the cost elements entering into the domestic rate as distinct from those that enter into the wholesale rate.

It is apparent that when an application is filed for service certain costs follow in orderly sequence. These costs are due to the initiative of the customer—application for service, unlocking of the meter, meter reading, collecting, commercial bookkeeping, other costs of services, locking of the meter, down to the application for discontinuance of service and payment of final bill.

The application for service carries with it an implied obligation to at least keep the account compensatory, and a rate structure should be such that this will automatically follow. The existing rate structure does not effect this so the remedy lies in the distribution of such costs.

These costs (customer costs) constitute a burden that can be roughly (not precisely) allocated, but with sufficient precision if coupled with consideration of the weight due to difference in load between domestic and wholesale consumers, so as to make possible a modification of the existing rate structure to the end that all accounts will become compensatory. For if unlocked meters register no consumption of gas or insufficient consumption of it, non-compensatory accounts exist, and equity demands that costs due to the initiative of customers be segregated and apportioned among customers who cause such costs.

On the record, exhibits and other data referred to in this proceeding, it is believed that the form of rate structure proposed by the company is

(1) Legal and proper in form;

(2) Not unduly discriminatory;

(3) More equitable, fair, and proper than the existing flat rates;

and so should be permitted to become effective as of March 1, 1929, to remain in effect until March 1, 1930, during which time the company should be directed to furnish bi-monthly reports of the effect thereof on (1) number of consumers; (2)

revenue on a per consumer basis divided as to domestic and wholesale use; (3) consumption of gas between the two classes of consumers and between the various groups of domestic consumers together with the costs applicable to each class of service so far as it may be possible to ascertain it. This for the purpose of enabling the Commission to study the effect of the rate schedule in the Brooklyn Union territory as a basis for the adoption of, or change in, such proposed rate at the expiration of the period hereinbefore set forth.

NORTH DAKOTA BOARD OF RAILROAD COMMISSIONERS.

RE FIRST FARMERS TELEPHONE ASSOCIATION.

[Cases Nos. 3021, 3021½.]

RE NORTHWESTERN BELL TELEPHONE COMPANY.

[Case No. 3047.]

Commissions — Jurisdiction over legal questions — Franchises and charters — Corporate powers.

1. The Board is without jurisdiction to pass upon legal questions raised as to the exercise of charter powers by a utility or as to the validity of its franchise, p. 210.

Commissions — Jurisdiction — Legality of operation in city — Consent to operation.

2. The Commission is without authority to say whether or not the operations of a utility within a municipality, with the tacit consent of the latter, are legal or illegal, p. 211.

Certificates — Necessity of securing — Operations after franchise expires.

3. A statute prohibiting a utility, which has failed for a year or more during the life of its franchise, either to commence or to continue operations already begun without obtaining the authority of the Commission, was held not to apply where utility operations have continued after the expiration of the formal franchise, p. 212.

Monopoly and competition — Telephones — Municipal consent.

4. The application of a new telephone utility to enter territory already served was denied notwithstanding the fact that there was some doubt as to the right of the existing utility to continue operations, where it appeared that the municipal authorities had at least tacitly consented thereto and that service was adequate, p. 213.

[May 8, 1929.]

APPLICATIONS of two telephone utilities for authority to do business in the same territory; authority awarded to one applicant and denied to the other.

Harding, Commissioner: On the 3rd day of November, 1928, the First Farmers Telephone Association, a corporation, filed with this Board an application under Chapter 235, Session Laws of 1927, for a certificate of public convenience and necessity for the construction, operation, and maintenance by it of a telephone line and exchange in the city of Lansford, North Dakota, which matter was docketed as Case No. 3021.

Thereafter, and on the 8th day of December, 1928, the said First Farmers Telephone Association, a corporation, filed with this Board a complaint or petition under Chapter 235, Session Laws of 1927, asking this Board to issue an order restraining the Northwestern Bell Telephone Company from operating the telephone exchange and system in Lansford, North Dakota, which matter was docketed as Case No. 3021½.

Thereafter, and on the 7th day of January, 1929, the said Northwestern Bell Telephone Company also filed with this Board its application under said chapter for a certificate of public convenience and necessity authorizing it to maintain and operate a legal telephone exchange and telephone system in said city of Lansford, North Dakota, which matter was docketed as Case No. 3047.

These various matters were duly set for hearing and hearings therein held at Lansford, North Dakota, on the 11th day of January, 1929, upon a common record, the following appearances being entered thereat:

Paul Campbell, Attorney, Minot, for the First Farmers Telephone Association; Karl F. Oehler, Attorney, of Omaha, for the Northwestern Bell Telephone Company.

The First Farmers Telephone Association is a corporation organized and existing under the laws of the state of North Dakota, engaged in the business of operating telephone line service in the rural districts immediately surrounding the city of Lansford, said lines connecting at the city limits of Lansford with the lines owned by the Northwestern Bell Telephone Com-

pany running to its switchboard in its local telephone exchange at that point.

The Northwestern Bell Telephone Company is a corporation duly organized under the laws of the state of Iowa, and is engaged in a general telephone business throughout the state of North Dakota. It is engaged in furnishing exchange telephone service in Lansford, and is also switching the lines belonging to the First Farmers Telephone Association.

On or about the 6th day of August, 1928, an ordinance was passed by the city council of Lansford granting to the said First Farmers Telephone Association of Lansford, North Dakota, its successors and assigns, the right to use and occupy the streets, alleys, and other public places of the city of Lansford, North Dakota, for the purpose of constructing, maintaining, and operating a general telephone system within the city of Lansford, North Dakota, which ordinance was published once in the Lansford Leader, a legal weekly newspaper published at the city of Lansford, on the 9th day of August, 1928.

It was stipulated by the Northwestern Bell Telephone Company at the hearing that it did not have a franchise from the city of Lansford to operate a telephone exchange and lines therein.

The First Farmers Telephone Association contends in support of its application for a certificate of public convenience and necessity to construct and operate a telephone system at Lansford, North Dakota, and its application asking this Board to issue an order restraining the Northwestern Bell Telephone Company from operating a telephone system at Lansford, and its protest against the application of the Northwestern Bell Telephone Company for a certificate of public convenience and necessity to maintain and operate a telephone exchange and system at Lansford:

1. That the service rendered by the Northwestern Bell Telephone Company at Lansford has been unsatisfactory, and that for the purpose of rendering to the citizens of Lansford and the people residing in its surrounding territory efficient, satisfactory, and proper telephone service it is necessary that said First Farmers Telephone Association be granted permission to con-

struct and operate a telephone exchange and system at that point;

2. That since the franchise of the Northwestern Bell Telephone Company to operate a telephone exchange and system at Lansford has expired, the said Northwestern Bell Telephone Company has now no franchise from the city to so operate and its operations in the city of Lansford are illegal;

3. That at no time since the termination of its franchise, the same having terminated more than one year prior to the date of the complaint, to-wit: October 30, 1928, had the Northwestern Bell Telephone Company applied to this Board for a certificate of public convenience and necessity requiring the exercise by it of the right or privilege to operate its telephone lines and exchange.

In support of its application for a certificate of public convenience and necessity to maintain and operate a local telephone exchange and lines in the city of Lansford, and its objections to the granting of a certificate of public convenience and necessity to the First Farmers Telephone Association, and to the granting of an order restraining it, the Northwestern Bell Telephone Company, from operating at Lansford, the Northwestern Bell Telephone Company contends:

1. That it is now rendering adequate exchange telephone service in the city of Lansford, North Dakota, and that it is supplying the reasonable wants of that community in that regard, and it is conforming to the orders of the Board of Railroad Commissioners with respect thereto;

2. That it is about to apply to the city council of the city of Lansford for a municipal franchise authorizing it to maintain and operate a local telephone exchange in said city;

3. That the First Farmers Telephone Association has no power under its charter to construct or operate a telephone exchange in the city of Lansford;

4. That the franchise of the First Farmers Telephone Association is invalid in that certain publication requirements were not complied with.

[1] This Board is of the opinion that it is without jurisdiction to pass upon the legal questions raised by the Northwestern

Bell Telephone Company as to the powers of the First Farmers Telephone Association under its charter and as to the validity of its franchise. We do believe, however, that they are immaterial here, as such matters might be corrected if occasion required.

As to the franchise, or lack of franchise, of the Northwestern Bell Telephone Company at Lansford, the testimony shows that the immediate predecessor of the Northwestern Bell Telephone Company in Lansford, the Northern Telephone Company, was granted a franchise in 1904 or 1905 by the then village of Lansford for a term of probably twenty years, the testimony concerning these matters being somewhat indefinite due to destruction of certain municipal records by fire some years ago. The testimony is also indefinite as to when the Northwestern Bell Telephone Company took over the property and operations of the Northern Telephone Company at Lansford, but it was at least seven years ago. The original franchise, therefore, expired probably some time in 1925. The records of the Northwestern Bell Telephone Company do not show whether the franchise of the Northern Telephone Company was ever transferred to it, but since 1925, at least, when any franchise they may have had expired, their operations have continued at Lansford without having a formal franchise. Sometime during 1927, the Northwestern Bell Telephone Company made an informal application to the city for a franchise. The record does not disclose that any action was taken on the application, but at least it was never granted. The record does not disclose that any steps have been taken by the city of Lansford or any other party to oust the Northwestern Bell Telephone Company from the streets and alleys. In fact, the city of Lansford was at the date of the hearings taking telephone service from the Northwestern Bell Telephone Company. These hearings were held at Lansford. Notice of the hearings had been given to the city of Lansford, but the city did not appear in such proceedings in any manner.

[2] We are, therefore, of the opinion that the operations of the Northwestern Bell Telephone Company at Lansford have been continued and conducted, whether or not it ever possessed a franchise, but at any rate since some time in 1925, with the

tacit consent of the city. This Commission is also of the opinion that it is without authority to say whether or not such consent is legal or illegal, or what rights the Northwestern Bell Telephone Company has secured thereunder.

[3] The application of the First Farmers Telephone Association for an order restraining the Northwestern Bell Telephone Company from further operation at Lansford also is based upon the proposition that the franchise of the Northwestern Bell Telephone Company had expired more than one year prior to the date of application, and that no application had been made to this Board that public convenience and necessity required the exercise of such rights and privileges, as required by Chap. 235, Session Laws of 1927.

We are of the opinion, however, that the provisions of such chapter, relied upon by the First Farmers Telephone Association, refer and apply to a resumption of operations under a franchise which by its terms has not expired, but where the utility has failed for a term of one year or more during the life of the franchise either to commence operations or to continue such operations after they have been begun, and that it does not apply to a case such as herein involved where operations have continued after the formal franchise has expired.

We, therefore, have the situation that so far as the city of Lansford is concerned it has indicated that it will be satisfied to have telephone service rendered within its limits by either or both of the companies involved.

Section 4812a10 of the 1925 Supplement to the 1913 Compiled Laws (a part of the general telephone laws of the state) provides:

"Whenever any telephone company furnishes adequate service and supplies the reasonable wants of the people of the city or community in which it is operating, and complies with the orders of the Commission, said Commission shall not grant to any other telephone company the right to compete with such carrier until after a public hearing of all parties interested, and finding by the Commissioners that the public convenience and necessity may require such competing plant, provided, that nothing in this act shall be held to prevent any telephone company from extending

its lines within the limits of any city or village in which it is at the time lawfully operating a local telephone exchange."

Chapter 235 of the Session Laws of 1927 does not in any manner repeal or amend the provisions of § 4812a10.

[4] The testimony of witnesses for the First Farmers Telephone Association shows that during a period previous to a year and a half prior to the hearings the service rendered by the Northwestern Bell Telephone Company at Lansford to the users in the municipality and in the surrounding territory has been in many respects unsatisfactory, but that that condition has been corrected and since that time the service has in fact been satisfactory and was satisfactory at the time of hearing. That its service is now satisfactory was also corroborated by witnesses for the Northwestern Bell Telephone Company.

There was no showing made by the First Farmers Telephone Association that it could render other or better service than the Northwestern Bell Telephone Company was rendering, or that other or additional service was required in the municipality and surrounding territory which could not be furnished by the Northwestern Bell Telephone Company.

This Board, therefore, makes the following conclusions:

1. That public convenience and necessity do not require the construction and operation of a telephone exchange system and lines in the city of Lansford, North Dakota, by the First Farmers Telephone Association, and its application therefor should be denied.

2. That under the facts and circumstances in these matters, the application of the First Farmers Telephone Association for an order restraining the Northwestern Bell Telephone Company from operating a telephone exchange and system in Lansford, North Dakota, should be denied.

3. That public convenience and necessity require the continued operation and maintenance by the Northwestern Bell Telephone Company of a telephone exchange and system at Lansford, North Dakota, and that the application of the Northwestern Bell Telephone Company for a certificate of public convenience and necessity therefor should be granted, conditioned upon the said Northwestern Bell Telephone Company having secured, or secur-

ing, the consent, franchise, permit, ordinance, or other authority of the city of Lansford therefor, and furnishing evidence thereof within a reasonable time to this Commission.

An order in accordance therewith will be entered.

WASHINGTON DEPARTMENT OF PUBLIC WORKS.

TOWN OF CASTLE ROCK

v.

CASTLE ROCK WATER WORKS.

[No. 6249.]

Valuation — Working capital — Water utility.

1. The amount of $934 was found to be a reasonable amount for working capital and supplies of a water utility having a rate base of $41,126, p. 215.

Depreciation — Percentage allowed — Water utility.

2. An allowance of 3.94 per cent was held to be a reasonable amount for depreciation of a water utility in a rate-making valuation, p. 216.

Return — Excessive percentage — Water utility.

3. Rates calculated to yield a return of approximately 6.42 per cent, 8.24 per cent, 7.93 per cent, and 10.4 per cent of a water utility's value for the preceding four years respectively were held to be excessive and were modified accordingly so as to yield approximately 8 per cent, p. 216.

Discrimination — Flat and meter rates — Water utility.

4. A rate structure providing one level of rates for flat rate water service and another level for metered water service was held to be discriminatory, p. 216.

Accounting — Proper methods — Water utility.

5. A water utility was directed to keep a customer's ledger containing an accurate record of revenues derived from each customer containing the date of billing, tariff schedule applicable, and the number and kind of units for which the bills were rendered, p. 218.

Accounting — Proper methods of accounting — Water utility.

6. A water utility was directed to keep an accurate record of its operating expenses, revenues, taxes, and plant investment in accordance with the Department's Classification of Accounts for Water Utilities, p. 218.

[April 24, 1929.]

COMPLAINT of a town against alleged excessive water rates; complaint sustained.

By the **Department:** This matter came on regularly for hearing at Castle Rock, Washington, on the 11th day of April, 1929, pursuant to notice duly given, before C. Rea Moore, Supervisor of Public Utilities.

Parties were represented as follows: S. Roake, Mayor, and Councilmen Graham, Lee, Churchill, Peterson, and Dougherty, for complainant; J. E. Kalmbach, owner and manager, and Thomas Heckelson, Public Utility Accountant, Portland, Oregon, for respondent.

Witnesses were sworn and examined, evidence was introduced, and the Department, being fully advised in the premises, makes and enters the following findings of fact and order.

Findings of Fact

I

That the Castle Rock Water Works, owned and operated by J. E. Kalmbach, operates a water system for public use in Castle Rock, Washington, and is a public service company subject to the jurisdiction of the Department of Public Works of Washington.

II

That on November 21, 1928, the Castle Rock Water Works filed Tariff W. D. P. W. No. 8 to become effective December 1, 1928. At the request of the city council of Castle Rock this tariff was suspended until January 1, 1929. On December 18, 1928, the city council filed a rate complaint, both in regard to proposed Tariff No. 8 and effective Tariff No. 7.

III

[1] That the Department has in this same proceeding made and entered its order fixing as of December 31, 1928, the sum of $40,192 as the fair value for rate-making purposes of the respondent's property used and useful in rendering water service in Castle Rock, Washington, and vicinity, fixing as of the same date the sum of $934 as a reasonable allowance for working

capital and supplies, and making as of that date the sum of $41,126 as the rate base upon which the respondent is entitled to earn a reasonable rate of return.

IV

[2] That a reasonable allowance for depreciation as of December 31, 1928, is 3.94 per cent.

V

That the respondent has not carefully kept its records of its operating revenues, operating expenses, taxes, losses due to bad debts, and plant account. This was testified to by the Department's engineer and admitted by the respondent's accountant.

Neither has the respondent adhered strictly to its rates and to its rules and regulations in billing for service to its customers. The Department's engineer has carefully compiled customer statistics showing the operating revenues that should be obtained under the present rates and under the suggested rate form if the tariff were strictly adhered to in rendering bills. The respondent's accountant admitted that he had made no such study.

The owner of the system has been charging too great an amount for his services for a system of this size.

VI

[3, 4] That the annual rate of return for the last four years has been 6.42 per cent for 1925, 8.24 per cent for 1926, 7.93 per cent for 1927, and 10.4 per cent for 1928, the latter percentage being based on estimated revenues rather than revenues as reported by the utility.

VII

That the present rates and proposed rates of the respondent are practically identical and will yield approximately the same annual revenues. That the rate structures tend to be discriminatory in that they provide one level of rates for flat rate service and another level of rates for metered service. Under either tariff the revenues will be unreasonable, unjust, and more than sufficient.

VIII

That the rates set forth in Schedules A, B, C, and D of the suggested rate forms on pages 47, 48, and 49 of Exhibit No. 1, entitled, Report of the Chief Engineer on Appraisal and Rate Investigation of the Castle Rock Water Works as of December 31, 1928, will eliminate discrimination between flat and metered rate services in so far as such discrimination can be eliminated. The rates set forth in the suggested rate forms are just, fair, and reasonable and will yield the respondent nearly 8 per cent upon the rate base as of December 31, 1928, if the charges made for the owner's services are included in the operating expenses in a reasonable amount.

IX

The rules and regulations filed by the respondent in its proposed Tariff W. D. P. W. No. 8 appear to be just, fair, and reasonable except Rule 12 which should be changed to read as follows:

"Rates for water service and supply shall be those published in the company's tariff on file with the State Department of Public Works. Unless otherwise stated in such published tariffs, the rates shall apply to a single service to one customer at one premises. Where two or more families with separate housekeeping establishments occupy the same or separate dwellings, each family using water shall be considered a separate customer. Each separate housekeeping establishment or business using water, regardless of joint use with other housekeeping establishments or businesses, will each be considered a customer.

"When conditions require that more than one customer be supplied through one meter, each customer shall be charged the minimum charge as provided by the schedule of rates and, if the consumption as shown by the meter exceeds the allowance with the minimum charge multiplied by the number of customers, the excess consumption charge shall be computed at the regular rates for one customer and the amount prorated equally to the several customers, or otherwise, as may be agreed among themselves."

X

The respondent should file its Tariff W. D. P. W. No. 9 in lieu of W. D. P. W. No. 8, rejected, and cancelling W. D. P. W. No. 7, which tariff should set forth the rates found on pages 47, 48, and 49 of Exhibit No. 1. Tariff W. D. P. W. No. 9 should also contain rules and regulations identical with those in Tariff W. D. P. W. No. 8, rejected, except Rule 12, which should be changed to conform with the rule set forth in findings of fact No. IX above. Tariff W. D. P. W. No. 9 should be effective for all service rendered on and after May 1, 1929.

XI

[5, 6] The respondent should keep a customers' ledger which will contain an accurate record of all revenues derived from each customer. It should contain the date of the period for which the bill is rendered, reference to the tariff schedule applicable, and the number and kind of units for which the bill is rendered.

The respondent should also keep an accurate record of its operating revenues, operating expenses, taxes, and plant investment, in accordance with the Department's Classification of Accounts for Water Utilities.

The respondent should also bill each and every customer in accordance with its rates and its rules and regulations legally on file with the Department. It should not discriminate by deviating from those rates and rules and regulations.

WISCONSIN RAILROAD COMMISSION.

LAUDERDALE LAKES IMPROVEMENT ASSOCIATION
v.
STATE LONG DISTANCE TELEPHONE COMPANY.

[U-3777.]

Apportionment — Telephone expense — Summer service rates.

A reasonable telephone rate for summer season service was made by apportioning the maintenance and repair expenses on a customer P.U.R.1929D.

basis and the remaining expenses on a monthly basis, using three months as the average use of the summer season service.

[April 18, 1929.]

COMPLAINT of a telephone customer against rates for summer season services; complaint dismissed.

By the **Commission**: Complaint in this case was filed with the Commission on November 2, 1928, by the Lauderdale Lakes Improvement Association and requests the Commission to reduce the rate of the State Long Distance Telephone Company for summer season service. The present rate for such service is $24 per year.

Hearing in the case was held in Madison on December 11, 1928, at which Philip G. Sanborn and A. G. MacDonald appeared for the petitioner, and C. H. Wiswell and J. A. Pratt appeared for the respondent.

At the hearing the petitioner rested its case upon the grounds that the rate for summer season service, which is used on the average from only two to four months a year, is the same as the rate for rural service which is used all the year. The respondent submitted exhibits and evidence to show that the present rate for summer season service is not excessive.

While it is true that under similar plant conditions summer season service is not as expensive to furnish as all year service, the difference in cost is confined to the economies that can be effected in operation during the period when the summer season service is not used. The annual fixed charges of depreciation and return on the investment in the plant necessary to furnish the summer season service must be borne in full by the summer season user the same as by the all year user, and as this element is an important one in the total cost of telephone service it is evident that the cost of the two services is not in proportion to the period of use.

In the present case the State Long Distance Telephone Company contends that the conditions under which the summer season service and the rural service are furnished are not similar and that the higher investment required to serve the summer season customers at the Lauderdale Lakes, which are from 6 to 8 miles

from the central office, requires that the present rate be continued.

In order to substantiate this claim the company submitted a detailed inventory of the property devoted to serving the fifty-four customers in the Lauderdale Lakes region. Our engineers have priced the inventory as submitted by the company and find the total reproduction cost new of the property assigned to the summer season customers to be $10,048 or approximately $185 per station. We believe that the inventory submitted is reasonably accurate and that were we to make a complete valuation that we would find the fair value of the property devoted to the service of the summer season customers to be at least $140 per station. The charges for depreciation and return on this investment would amount to $16 per year.

The operating expenses of the State Long Distance Telephone Company for the year ended December 31, 1928, were reported to be as follows:

Repairs of wire plant	$2,394.21
Repairs of equipment	766.62
Station removals and changes	99.54
Other maintenance expense	1,307.92
Operators' wages	6,976.98
Other traffic expenses	568.26
General office salaries	6,072.01
Other general expenses	2,551.72
Taxes	876.89
Total expenses, before depreciation	$21,614.15

No strictly scientific allocation of the operating expenses can be made to the summer season service without a detailed study that we do not believe is necessary in this case as the apportionment which we have made below and which favors rather than penalizes the summer season service indicates that the present rate is not excessive.

In our apportionment we assigned the maintenance and repair expenses, totaling $4,468.75, on a customer basis and the remaining expenses, amounting to $17,145.40, on a monthly use basis, using three months as the average use of the summer season service. Maintenance and repairs on telephone property, except to a minor extent on the telephone instruments and central office switchboard, are not occasioned by use but rather by age and exposure to the weather so that there is relatively little injustice

done the summer season customer in apportioning these items of expense on an annual basis.

The injustice that is done by the above apportionment is more than compensated by the method used in apportioning the remaining expenses on a monthly use basis.

As the company serves approximately 1,000 subscribers on the average for the year—the company reporting 980 as of December 31, 1928—we find that the maintenance and repair expense per summer season customer is about $4.50 and other expenses about $4.25 per season. These costs with the fixed charges for depreciation and return of $16 per year based on an average investment of $140 per station brings the total cost to $24.75 per season of three months.

As the present rate is $24 per year we must hold that the rate is not excessive and we, therefore, dismiss this complaint.

CALIFORNIA RAILROAD COMMISSION.

RE CALIFORNIA TELEPHONE & LIGHT COMPANY et al.

[Decision No. 20901, Application No. 15391.]

Accounting — Consolidation — Capital account — Historical cost.

1. Upon the transfer of utility properties, the purchasing utility, in recording the transaction on its books, should charge to fixed capital accounts not more than the estimated historical cost of the properties plus net additions from the date of valuation to the date of transfer, and should credit to its reserve for accrued depreciation the depreciation estimated to have accrued on such properties, p. 223.

Accounting — Consolidation — Entry of purchase price.

2. Should the actual purchase price of utility properties as represented by stock issued and liabilities incurred and indebtedness to be assumed exceed estimated historical cost less depreciation and the current and other assets acquired, the purchasing utility should charge such excess to its profit and loss accounts, p. 223.

[March 22, 1929.]

APPLICATION by certain utilities to consolidate; granted.

Appearance: P. C. Cutten, for applicants.

P.U.R.1929D.

By the **Commission:** In the above entitled proceeding the Railroad Commission is asked to make its order authorizing California Telephone & Light Company to grant, assign, and transfer to Pacific Gas & Electric Company all of its properties and to cease furnishing and supplying electric service in the territory in which it now operates.

The application shows that California Telephone & Light Company is a corporation organized on or about November 23, 1911, under the laws of the state of California. At one time the corporation was engaged in the business of operating telephone and electric plants and properties in portions of Sonoma, Mendocino, and Lake counties, but during 1926, pursuant to authority granted by the Commission in Decision No. 17641, dated November 18, 1926, sold its telephone business and properties to Sacramento Valley Telephone Company, so that at present it is operating as an electric utility only.

As of December 31, 1928, it reports its assets and liabilities as follows:

Assets.

Fixed capital		$3,272,832.83
Other investments		480.00
Cash in sinking fund		35.85
Current assets—		
Cash and special deposits	$128,243.29	
Bills receivable	100,000.00	
Accounts receivable	36,461.22	
		264,704.51
Deferred charges—		
Discount and expense on bonds	26,475.37	
Unexpected taxes, etc.	4,018.48	
		30,493.85
Discount on stock		48,492.88
Total assets		$3,617,039.92

Liabilities.

Capital stock outstanding—		
Common	$764,850.00	
Preferred	550,031.91	
		$1,314,881.91
Funded debt		1,437,300.00
Current liabilities—		
Advances from Pacific Gas and Electric Company	$487,882.96	
Meter and line deposits	24,983.38	
Unpaid coupons	33,310.31	
		546,887.65
Reserves		181,502.85
Surplus		136,467.51
Total liabilities		$3,617,039.92

[1, 2] It is reported that Pacific Gas & Electric Company is the owner of all the outstanding stock, both common and preferred, of California Telephone & Light Company except seven shares which are held by the members of the board of directors, but which are held, in fact, in trust for the use of Pacific Gas & Electric Company. It appears that Pacific Gas & Electric Company acquired the outstanding stock of California Telephone & Light Company under authority granted by the Commission by Decision No. 11874, dated March 30, 1923, (Anno.) P.U.R. 1927A, 575, and issued in exchange therefor $550,031.91 of its own preferred stock and $254,950 of its common stock. The preferred stock of the two companies were exchanged on a share for share basis and the common stock on a basis of one share of Pacific Gas & Electric Company common stock for three shares of common stock of California Telephone and Light Company. (Volume 23, Opinions and Orders of the Railroad Commission of California, p. 297.)

Since the acquisition of the outstanding stock, Pacific Gas & Electric Company has financed the cost of additions and betterments and has placed its own schedules of rates in effect. It now proposes to acquire the physical properties and merge them with its own system, and in this connection it alleges that operation thereof as an integral part of its system will result in increased efficiency and in economy of operation and will be in the public interest accordingly. No opposition to the proposed transfer has been made to the Commission.

To effect the transfer applicants, under date of January 15, 1929, entered into an agreement, a copy of which is filed as Exhibit "C," whereby California Telephone & Light Company agreed to transfer all of its properties of every kind and nature to Pacific Gas & Electric Company in consideration that the latter company assume and undertake to pay the principal and interest of all bonds of California Telephone & Light Company outstanding at the date of transfer and all other debts, obligations, and liabilities. The testimony in this connection shows that after acquiring the properties it is the intention of Pacific Gas & Electric Company to call the outstanding bonds for pay-

ment, and to cause the dissolution of California Telephone & Light Company.

In making this application for permission to transfer properties, applicants have filed as Exhibit 4 a valuation of the physical property showing the estimated cost to reproduce new, as of November 30, 1928, at $2,748,878, and less accrued depreciation at $2,563,743, and the historical cost as of the same date at $2,561,229, and less depreciation at $2,376,094. Additions and betterments during December, 1928, are reported at $11,761.

We believe that the application should be granted, subject to the conditions in the order following this opinion. It occurs to us, however, that Pacific Gas & Electric Company, in recording the transaction on its books of account, should charge to its fixed capital accounts not more than the estimated historical cost of the properties as of November 30, 1928, plus net additions since the date of the valuation to the date of transfer and should credit to its reserve for accrued depreciation the depreciation estimated to have accrued on such properties. If the actual purchase price of the properties, as represented by the stock heretofore issued and the liabilities incurred and indebtedness to be assumed exceeds the estimated historical cost of the properties, less depreciation, and the current and other assets acquired, the company should charge such excess to its profit and loss accounts.

While we have referred to applicant's valuation figures in making this opinion and order, it should be understood that nothing herein said or contained should be considered as binding upon the Commission to recognize such valuation figures hereafter for the purpose of fixing rates or for any other purpose. Such reference as we have made is for the purpose of this proceeding only.